

Constitutional Constraints and Legislative Approaches to the Legal Regulation of Social Media Platforms

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ABSTRACT

The paper highlights that despite the unavailability of specific legislation regulating Social Media laws in India, whatever regulations are available, they navigate through the constitutional constraints set by the right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution and other legislations. However, this right is not absolute and is subject to "reasonable restrictions" under Article 19(2), which includes concerns related to sovereignty, integrity, security of India, public order, and decency. Legislative approaches, such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, have been introduced to hold social media platforms accountable for the content hosted on their platforms.

Keywords: - Social media, freedom of speech and expression

Introduction

The constitution, serving as the bedrock of all laws in India, plays a pivotal role in the legal control over social media. A law must align with the Fundamental Rights outlined in Part III to pass the constitutional test. This includes the freedom of speech and expression, a crucial aspect of social media. As Justice Sawant, Secretary of the Press Information Bureau, noted, the freedom of speech and expression encompasses the right to acquire and disseminate information.²

Social media has become integral to India's social, political, and economic fabric. Platforms like Facebook, Twitter, Instagram, and WhatsApp have revolutionised communication, allowing millions of Indians to express themselves freely, exchange information, and engage with their communities. However, the widespread use of social media has also led to concerns about its misuse, particularly in areas such as misinformation, hate speech, privacy violations, and threats to national security. As a result, the Indian government has implemented various regulations to manage and govern the activities of social media platforms while balancing freedom of speech with the need for accountability.

1. Freedom of speech and expression and the Media Regulation

1.1 What is Freedom of Speech and Expression?

The Constitution of India, under Article 19(1)(a), enshrines the right to freedom of speech and expression, a cornerstone of democratic governance. This provision grants Indian citizens the ability to express their thoughts, opinions, and beliefs through various mediums, encompassing spoken and written communication and digital platforms.

However, this right is not absolute and is subject to reasonable restrictions per Article 19(2) of the Constitution. These restrictions are imposed in the interest of India's sovereignty and integrity, national security, public order, decency, morality, contempt of court, defamation, incitement to an offence, and the protection of friendly relations with foreign states. The scope of these limitations has been interpreted through numerous judicial precedents, shaping the contours of free speech jurisprudence in India.

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² "The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of Speech and expression is necessary, for self-expression, which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything, since it is only through it that the widest possible range of ideas can circulate. ? It is the only vehicle of political discourse so essential to democracy." Secretary Ministry of Broadcasting and Cricket Association of Bengal and others, AIR 1995 SC 1236

Significant judicial rulings, such as the Supreme Court's decision in **Shreya Singhal v. Union of India**³ invalidated Section 66A of the Information Technology Act of 2000, highlighting the judiciary's role in ensuring that legislative measures do not disproportionately infringe on freedom of expression. Section 66A penalised "offensive" online messages and was struck down for being vague and violating constitutional guarantees.

Freedom of speech and expression is a fundamental right guaranteed by the Indian Constitution. It is designed to protect state action other than in the legitimate exercise of its power to regulate private rights in the public interest.⁴ They are the fundamental rights of every kind of mass media, including social media. Article 19(1) (a) of the Indian Constitution assures Freedom of Speech and expression: 'All citizens shall have the right of freedom of speech and expression.'⁵ This right is at par with Article 19 of the Universal Declaration of Human Rights, which says, 'Everyone has the right to freedom of information and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'⁶ Again, the freedom for speech and expression by Article 19(2) of the International Covenant on Civil and Political Rights" which says: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, or in the form of art, or through any other of his choice."⁷ In the context of these legal provisions, the terms speech and expression have different dimensions.

In the context of social media, it may be the right of the broadcaster, the audience (or anybody at the receiving end), or a third party who is neither a broadcaster nor a member of the audience. The Fundamental Right is available to all these three groups, and the restrictions are given under Article 19(2). The fundamental rights are different from the legal rights, statutory rights, customary rights, etc. Legal rights (e.g. contractual rights) cannot be protected as fundamental rights because the Constitution does not protect them. While the legislature can take away a statutory right or right created by legislation, a fundamental right cannot be abrogated by legislation.

Thus, the legal framework governing freedom of speech in India ensures a balance between individual liberties and broader societal interests, navigating the complex intersection of free expression and state regulation.

1.2 Regulatory Mechanism

There are three kinds of Constitutional Regulatory Mechanisms:

1. **Social,**
2. **Political,** and
3. **Economic.**

The foundation of the legal regulation is to secure justice. The objectives are to attain liberty (of thought, expression, belief, faith and worship), equality (of status and opportunity), fraternity and the unity and integrity of the nation.⁸ Part III, Fundamental Rights, and Part IV, the Directive Principles, are the two most significant regulations-related parts.

³ AIR 2015 SC 1523

⁴ AIR 1952 SC.59

⁵ Article 19(1)(a) Constitution of India

⁶ Article 19 Universal Declarations of Human Rights

⁷ Article 19(2) of the International Covenant on Civil and Political Rights. The provisions were applied by the Supreme Court in (1) Raghubar Dayal Jai Prakash v. Union of India AIR 1962 SC 263 and (2) State of Bihar v. Kameswar Singh, AIR 1952 SC 252.

⁸ The constitution of India Preamble contains all these objectives which reads as follows:-We, the people of India, having solemnly resolved to constitute India into a (sovereign socialist secular democratic republic) and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and

Every legal and regulatory system in the country shall conform with fundamental rights. And every law derogating the basic rights is null and void to the extent of such inconsistency.⁹ At the same time, all the legal regulations must protect fundamental rights. The fundamental rights relevant to social media regulations are equality, freedom, the right against exploitation, cultural and educational rights, and constitutional remedies.¹⁰

The Constitutional directive for the legal controls is paved on the foundation of social order for the promotion of the welfare of the people with the social order in which justice, social, economic and political, to minimise the inequalities in income, status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in other vocations.¹¹ The principles of policy to be followed by the State include securing equal payment and means of livelihood for men and women¹², conservation of material resources of the community and distribution of the ownership and control over it to subserve the common good¹³. The directives include the state endeavouring to regulate the operation of the economic system to prevent the concentration of wealth and means of production to the common detriment¹⁴

Further, legal control shall be directed at protecting women, children, and weaker sections.¹⁵ The citizen's economic and health conditions also must be accounted for¹⁶. The Constitution prescribes that the law shall consider that children are given opportunities and facilities to develop healthily and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment¹⁷. Further, the laws shall be intended to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organised peoples with one another, and encourage the settlement of international disputes by arbitration.

“And ye shall know the truth, and the truth shall make you free”, is the immortal declaration in the Holy Bible.¹⁸ The significance of the right and duty of freedom of speech is acting as a beacon of guidance for truth even after centuries of preaching. The IT Act, 2000 provides the foundation for regulating intermediaries, including social media platforms, in India. **Section 69A** of the Act empowers the government to block access to any online content that threatens national security, public order, or other state interests. This has led to instances of social media content being blocked or accounts being suspended. The legislation sets the legal tone for regulating harmful content, misinformation, and hate speech, but its implementation must comply with the constitutional constraints under Article 19(2), ensuring that restrictions are reasonable and proportionate.

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 introduced significant changes to the regulation of social media platforms, requiring intermediaries to implement stricter content moderation practices, appoint grievance officers, and remove unlawful content within a set timeframe. These rules aim to hold platforms accountable while balancing user rights. However, challenges have arisen regarding whether certain provisions infringe upon the **right to freedom of speech** or **privacy**, leading to ongoing judicial scrutiny.

integrity of the nation in our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution the constitution of India of 1950

⁹ The Constitution of India Article 13.

¹⁰ Id Article 32

¹¹ Id Article 38

¹² Id Article 39

¹³ Id Article 39(d)

¹⁴ Id Article 39(c)

¹⁵ Id Article 39(e)

¹⁶ Id Article 39 (f)

¹⁷ Id Article 39(f)

¹⁸ John-8: 32, Holy Bible

2. Constitutional remedies on Bureaucratic exegesis

Criticism of a particular Government or, campaigning against the ruling party, or comments against bureaucracy will not attract the provisions relating to sedition.¹⁹ The contemporary trend in broadcasting is that the more political views can be pumped through the media, the stronger the foundation of the political parties. Some political parties have their own channels. Those parties cannot own a channel used to buy airtime from the broadcasters for their propagation. Side by side to this, there used to emerge programmes in the form of satire, comedy shows, talk shows, etc., which contain dense criticism of the actions or inactions of the state, the activities, and sometimes even the mannerisms of the politicians. Often, such criticism was mean and defamatory to the persons involved. There were instances in which the governments crumbled down due to the media propaganda. In this instance, it is to be noted that such criticism will not affect the 'State', and the State is different from the bureaucracy and political parties.

The difference between a State and the Government established by law differs from the officialdom, as Lok Manya Bal Gangadhar Tilak explained. He said that while the state is the house, the officialdom is like rooms. Arranging and re-arranging or repairing the rooms and pulling down the house are entirely different. The seditious acts amount to pulling down the house. The criticism based on truth and values will only protect the state. If the criticism is vicious, it amounts to defamation. Even if such a wrongful programme will not attract provisions relating to sedition, an action based on libel will prevail.

3. Restrictions In The Interest Of Security Of The State

Communal riots, class hatred and terrorism are the curse of every modern State, including India. The social media can be utilised for instigating and fomenting such crimes. The protection of fundamental rights shall not be given to such programmes. Section 196 of the Bharatiya Nyay Sanhita deals with promoting class hatred. The section says whoever, either by spoken words or by written words or by signs or by visible representations or otherwise promotes or attempts to promote on grounds of religion, race, place of birth, residence, language, caste or community, or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional grooves or cast or communities or disturbs public tranquillity or organises any activity to cause fear or alarm or insecurity amongst members of the community shall be punished with imprisonment up to 3 years or with fine or with both. In the broadcasting media, there is a likelihood that airing programmes containing vicious matters detrimental to the social labyrinth will attract the penal provisions of this section. The terms 'the words spoken or written, signs, visible representations or otherwise' cover all possible broadcasting materials. Article 19(2), limitation upon the freedom of speech and expression in case of violation of public tranquillity, will attract the penal provisions in S. 196 of the Bharatiya Nyay Sanhita.

Section 197 of the Bharatiya Nyay Sanhita, 2023, which is against imputations and assertions prejudicial to national integration, applies to the media. If a broadcasting item contains any imputations that any class of persons cannot because of their being members of any religious, racial, language or regional group or cast or community, bear true faith and allegiance to the constitution of India as by law established or uphold the sovereignty of India or publishes such propaganda that a member of a particular class will be denied protection under the constitution of India and the rights of citizens or causes disharmony or feelings of enmity or ill will between such classes of people shall be punished with imprisonment up to three years or with fine or with both. If a broadcasting item contains any statement or programme which may cause class or communal hatred, it will attract the provisions of S. 197 of the Bharatiya Nyay Sanhita, 2023. The terms 'signs, visible representations, or otherwise apply to broadcasting also.

4. Findings of Indian Courts on The Freedom of Broadcasting

The freedom of social media service providers is not mere freedom from governmental intervention, freedom from pre-censorship, etc.; it includes the freedom to protect the right to freedom of speech and expression of all people without the

¹⁹ P.S.Achuthan Pillai. Criminal Law ,Butterworth India New Delhi, 9th edition 2000 (p 355)

state's hegemony or private dominance. In that dimension, the social media service providers may act as free speech facilitators.

The Primary right in the case of social media is the right to broadcast itself. Whether the state has the right to exclude all others from broadcasting activities is a much-debated question. Hon'ble Supreme Court of India has unambiguously held that "Broadcasting is a means of communication and, therefore, a medium of speech and expression. Hence, in a democratic polity, neither private individuals, institutional organisations, nor any government or government organisation can claim exclusive rights over it. Our Constitution also forbids monopoly either in print or social media."²⁰ Further, in the same case, the court observed, "The freedom of speech and expression includes the right to acquire information and disseminate it."²¹

As per the present nature of the *lex loci* (at least in theory), anyone who satisfies the prescribed legal conditions can participate in broadcasting activities. Exceptions include the fact that the right to start Terrestrial Broadcasting is not yet available to the public. The term broadcasting needs to be elaborated on in the context of the proliferation of social media.²² The current broadcasting systems are Radio Broadcasting (both Terrestrial and Satellite), Television Broadcasting (including Terrestrial and Satellite, Cable TV and DTH or Direct Home Broadcasting) and Webcasting or broadcasting through the internet. As per the observation of the Supreme Court, the broadcasting is done via terrestrial cable and satellite.²³ As per the Prasar Bharathi Act, broadcasting means, in addition to the above, disseminating any form of communication like signs, signals, writing, pictures, images and sounds of all kinds²⁴.

²⁰ Per Justices P.B.Sawant and S. Mohan Secretary Ministry of Broadcasting and Broadcasting v Cricket Association of Bengal and others, A.I.R 1995 S .C. 1236 Para 13

²¹ "The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of Speech and expression is necessary, for self-expression, which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything, since it is only through it that the widest possible range of ideas can circulate.? It is the only vehicle of political discourse so essential to democracy." Secretary Ministry of Broadcasting v Cricket Association of Bengal and others. AIR 1995 SC 1236

²² Section 2 of the Broadcasting Regulation Bill which relates to the granting of license mentions the following seven categories of broadcasting: 1. Terrestrial radio broadcasting 2. Terrestrial television broadcasting.3. Satellite radio broadcasting 4. Satellite television broadcasting 5. Direct to home broadcasting or DTH 6. Local delivery services and 7 Such other services as may be prescribed

²³ The Supreme Court has observed that the telecasting is of three types: "The telecasting is of three types, - (a) terrestrial, (b) cable (c) satellite. In the first case, the signal is generated by the camera stationed at the spot of the event and the signal is then sent to the earthly telecasting station such as the TV centre which in turn relays it through its own frequencies to all the views who have TV screens/sets. In the second case, viz., cable telecasting, the cable operator receives the signals from the satellite by means of the parabolic dish antenna and relays them to all those TV screens which are linked to his cable. He also relays the recorded file programmes or cassettes through the cable to the cable-linked viewers. In this case, there is no restriction on his receiving the signals from any satellite to which his antenna is adjusted. There is no demand made by him on any frequency or channel owned or controlled by the national Government or governmental agencies. The cable operator can show any event occurring in any part of the country or the world live through the frequencies if his dish antenna can receive the same. The only limitation from which the cable TV suffers is that only those viewers who are linked to the dish antenna concerned can receive the programmes relayed by it. The last type, viz., satellite TV operation involves the use of a frequency generated, owned or controlled by the national Government or the governmental agencies, or those generated, owned and controlled by other agencies." Secretary Ministry of Broadcasting and Information v Cricket Association of Bengal and others. AIR 1995 SC 1236 Para 13.

²⁴ "Broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all it's grammatical variations and cognate expressions shall be construed accordingly"

The Copyright Act, 1957 has defined the term broadcast as “communication to the public by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or by wire, and includes a re-broadcast”.²⁵

In common parlance,²⁶ the terms speech and expression cover all these elements. The umbrella protection under the trio of Articles relating to speech and expression is available to all these audio-visual means and their ancillary activities. The deep-rooted opinion about social media differs from that of print media. Hence, the rules and regulations relating to print media cannot be adopted for broadcasting. Broadcasting as a significant medium has been analysed under different doctrines and dogmas. For example, as per the school of liberalism, the media shall be provided with access to the public both at transmission and receiving ends. The liberalists are of different categories that approach the matter differently to attain the same goal. Positivists are another group. To them, the media shall be under the control of the positive commands of the sovereign. According to them, that is essential for providing the public equitable access to the press. In other words, if the state does not control or regulate the media, the chances of private monopolisation and abuse are larger than in a situation of absolute liberalisation. Bhagwati, J. in the **Express Newspapers case** speaking for the Court said that “The freedom of speech and expression includes freedom of propagation of ideas which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and that the liberty of the press consists in allowing no previous restraint upon publication.”

It is indisputable that the term freedom of the media means the right of all citizens to speak, publish, and express their views. The freedom of the press embodies the right of the people to read. The freedom of the press is not antithetical to the right of the people to speak and express. The Bombay High Court held in a case that: "True democracy can thrive only in a free clearinghouse of competing ideologies and philosophies, political, economic and social. In this, the press has an important role to play. The day this clearing house closes would toll the death knell of democracy. The constitution of India provides regulatory provisions to protect both sides of the social media venture. The broadcaster, as well as the beneficiary of the media, is brought within the umbrellas of protection as well as the regulation. Article 13 prescribes that any law derogating the principles of fundamental rights is void ab initio. Indian Constitution does not specifically mention the liberty of mass media. However, the word ‘speech and expression’ covers the rights related to broadcasting. The decision in **Maneka Gandhi’s case** reinforces this view. In this case, the court held that: “It is not a correct view that the right which is not specifically mentioned by name can never be a fundamental right within the meaning of Art 19(1) (a). The test is whether the right claimed is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is and substance nothing but an instance of the exercise of the named fundamental right.”²⁷

The significance the Article 19(1) (a) was observed in several cases by the Supreme Court. In the words of Justice Patanjali Sastri, it is the foundation of all democratic organisations.²⁸ Without free political discussion, public education is not possible. The free media is essential for the proper functioning of the government. However, the judge gave a hint of warning by saying that freedom of such amplitude might involve risks of abuse²⁹. Justice Das held that there must be a balance between the freedom of speech guaranteed by Article 19(1) and ‘the exigencies of State which is the custodian of the interest of the general public, public order, decency or morality and other public interests which may compendiously

²⁵ Section 2(dd) "broadcast" means communication to the public- (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or(ii) by wire, and includes a re-broadcast;) Broadcasts may be audible only, as in radio, or visual or a combination of both, as in television. Sound broadcasting in this sense may be said to have started about 1920, while television broadcasting began in the 1930s. With the advent of cable television in the early 1950s and the use of satellites for broadcasting beginning in the early 1960s, television reception improved and the number of programmes receivable increased dramatically.

²⁶ 'Programme' is defined in Section 2 (g) of The Cable Television (regulation) Act as a means of any television broadcast and includes- Exhibition of films, features, dramas, advertisement and serials through video cassette recorders or video cassette players;

²⁷ A.I.R. 1978 SC 597

²⁸ A.I.R. 1950 SC.124

²⁹ A.I.R 1950 SC 124.

be described as social welfare.³⁰ The Supreme Court is generally against the 'pre-censorship' of the media. In **Brij Bhushan v. State of Delhi**³¹ the apex court held that pre-censorship is a restriction of the liberty guaranteed by Article 19(1) (a). Justice Das held in another case that if the mass media is prevented from publishing its view or the views of its correspondents, 'it is certainly a serious encroachment on the valuable and cherished right to freedom of speech'. The restriction upon the media content and the material used for it comes within the 'objectionable restriction' under the observation of the Supreme Court. In the **Sakal Newspaper Case**, the restriction upon the pages and the size imposed by the Government on a newspaper was held as against the freedom secured by the Constitution. In Brij Bhushan's case, Patanjali Sastri, J., speaking for the majority judgment, said that "Every free man has an undoubted right to lay what sentiments and pleases before the public; to forbid this is to destroy the freedom of the press".

Broadcasting is an audio-visual medium, and cinema is the most popular and dominating form of broadcasting information. The virtues and vices of the press largely depend upon movie-based programmes. Justice Krishna Iyer has pointed out, "No doubt cinema is a good instrument of public good if geared to social ends and can be a public curse if directed to anti-social objectives."³² The impact of audio-visual media is multiple compared to other art forms.

Television programmes can also be considered akin to cinema. In the **K.A. Abbas Case**, Justice Hidayatullah observed about cinema that: "The treatment of motion picture must be different from that of other forms of Art and expression; the motion picture can stir up emotions more deeply than any other product of art."³³

The right to participate in broadcasting through televising a cinema is also part of the freedom secured by Article 19(1). In the **Odyssey Communications case**, the Supreme Court held that: "A citizen's right to exhibit films on television is similar to the right of a citizen to publish his views through any other media such as newspapers, magazines, advertisements, etc."³⁴ In **Indira Jaisingh v Union of India**, the Bombay High Court observed that "Our courts have considered the right of freedom of speech and expression as including freedom of the press. The right equally covers other media. A citizen cannot enjoy freedom of speech and expression if he is not permitted to express his views freely through mass media, even when he is invited to use these media."³⁵ Justice V.R. Krishna Iyer said, 'Despite evil legislation, some life still survives in the Press because the Court has pumped in some oxygen.' In the context of social media, we may read that despite a legislative vacuum, some life still survives in social media because the Court has pumped in some oxygen. The highest vitalising judgment came in the Cricket broadcasting case.

5. Social Media and Religious Sentiments

Social media in India plays a significant role in shaping and influencing religious sentiments. Platforms like Facebook, Twitter, and WhatsApp have become spaces where people express their beliefs, share religious content, and engage in debates. However, they also amplify religious polarisation and misinformation, often leading to communal tensions. With rapid digital penetration, these platforms have the power to unite diverse religious communities and spread inflammatory rhetoric. The Indian government has increasingly intervened, regulating online content to curb hate speech, though challenges persist in balancing free expression with preventing religious conflict.

One significant Supreme Court of India judgment related to social media and religious sentiments is the Amit Sahni vs Commissioner of Police & Ors.³⁶ also known as the **Shaheen Bagh Case**. This judgment highlighted the need to regulate social media platforms to prevent the spread of inflammatory content, including religious hate speech. The court emphasised the role of intermediaries like Facebook, WhatsApp, and Twitter in curbing misinformation that could incite religious violence or communal disharmony.

³⁰ A.I.R 1956 SC 559.

³¹ A.I.R 1950 SC 129

³² A.I.R 1980 SC 604

³³ AIR 1971 SC 481

³⁴ AIR 1988 SC 1642

³⁵ AIR 1989 Bom 25

³⁶ Civil Appeal 3282 of 2020

Section 299 of the Bharatiya Nyay Sanhita, 2023, talks of malicious acts that outrage religious feelings and applies to social media. The section says that whoever, with deliberate and malicious intention, outrages the religious feelings of any class of India by words, signs, visible representation, or otherwise insults or attempts to insult the religion or religious beliefs of that class shall be punished with imprisonment of 3 years or with fine or with both.

6. Restrictions in the Interest of Friendly Relations with Foreign States

Restrictions in the interest of friendly relations with foreign states are also mentioned in Article 19(2) of the constitution. Section 153 of the Bharatiya Nyay Sanhita, 2023 has prescribed a punishment of imprisonment for 7 years with a fine in case anybody wages war against any Asiatic power in alliance or at peace with the Government of India or attempts to wage such war or abets the waging of such war shall be punished with imprisonment for life and fine. Sec 154 says that whoever commits depredation or prepares to commit depredation on the territories of any power in alliance or at peace with India shall be punished with imprisonment for seven years and forfeiture of any property. If any broadcasting programme contains any items detrimental to the friendly relationships with any friendly country. In that case, the wrongdoer may be imposed with the punishment, and along with that, broadcasting materials, including equipment used for it, may be seized.

The Supreme Court of India has not issued a single landmark judgment on social media and its impact on India's friendly relations with foreign states. However, the court has addressed social media's influence on national security and international relations in several cases.

One notable case is the *Shreya Singhal vs. Union of India*³⁷, where the Supreme Court struck down Section 66A of the Information Technology Act of 2000. Section 66A criminalised posting "offensive" content on social media, which could potentially include content affecting India's relations with foreign states. The court ruled that this provision was vague and violated the right to free speech under Article 19(1)(a) of the Constitution. While the judgment emphasised freedom of expression, the court also noted that social media could not be used to harm national security or diplomatic relations. It left open the possibility for the government to enact laws to regulate content that could affect India's relations with other nations.

Additionally, in *Anuradha Bhasin v. UOI*³⁸, also known as the **Kashmir Internet Shutdown** Case and social media's role during politically sensitive situations, the Supreme Court has observed that unchecked social media content can affect India's diplomatic relations. Though not directly ruling on international relations, the court highlighted the need for responsible use of online platforms to prevent the spread of misinformation that could escalate tensions domestically and internationally.

While no single case explicitly focuses on social media's direct impact on India's relations with foreign states, these judgments underscore the balance between freedom of speech and maintaining national security, including preserving friendly foreign relations.

7. Conclusion

Regulation is the promulgation, monitoring and enforcement of rules. Regulation creates, limits, or constrains a right, creates or limits a duty, or allocates a responsibility. Regulation can take many forms, such as legal restrictions promulgated by government authorities. These contractual obligations bind many parties (for example, "insurance regulations" that arise out of contracts between insurers and their insured), self-regulation by an industry such as through a trade association, social regulation (e.g. norms), co-regulation, third-party regulation, certification, accreditation or market regulation. In its legal sense, regulation can and should be distinguished from primary legislation (by Parliament of elected legislative body) on the one hand and judge-made law on the other. Regulation mandated by a state attempts to

³⁷ AIR 2015 SC 1523

³⁸ AIR 2020 SC 1308

produce outcomes that might not otherwise occur, produce or prevent outcomes in different places from what might otherwise happen, or make or prevent outcomes in different timescales than would otherwise occur. In this way, regulations can be seen as the implementation of policy statements.

The Constitutional regulation says that anything violative of Part III of the Constitution of India or the Fundamental Rights is null and void. They are the human rights. The legal rights are given in the VIIth schedule of the law. Item number 39 of the Ist list of the schedule says that the central government alone can make laws regarding wireless communication. The Cable Television Networks (Regulation) Act, the Prasar Bharati Act, the TRAI Act and the related rules, notifications, orders, etc, were made by these laws as the present laws. To enforce the Constitutional mandate, the states must also be given some powers. However, we still lack a law regulating Social Media and its various aspects. And it would not be wrong to assert that legislation in *stricto sensu* in this matter is yet to be made.

However, the Indian courts have consistently played a crucial role in interpreting the constitutionality of laws regulating social media. The judiciary ensures that the state does not overstep constitutional boundaries when imposing restrictions on speech or privacy. Recent cases, such as challenges to the IT Rules, reflect the delicate balancing act required to regulate platforms while upholding constitutional rights. Courts apply the **doctrine of proportionality** to assess whether legislative restrictions are justified, given the rights enshrined in the Constitution.

In the Indian context, social media platform regulation is governed by a careful balance between constitutional constraints, primarily through the rights to free speech and privacy, and legislative approaches embodied in the IT Act and related rules. As technology evolves, so will the laws, with courts acting as the final arbiter to ensure that legislative controls remain within constitutional boundaries, reflecting the title's focus on the dual nature of legal regulation.