

REGULATING SOCIAL MEDIA: CONSTITUTIONAL PERSPECTIVE

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Abstract

(Catchy opening line) “Relying on the government to protect your privacy is like asking a peeping tom to install your window blinds”. **(History)** The earliest forms of social media appeared almost as soon as technology could support them. E-mail and chat programs debuted in early 1970s, but persistent communities did not surface until the creation of the discussion group network USENET in 1979. Social media in India began to gain traction in the mid- 2000s with the increasing availability of internet access. Orkut, a social networking site, was one of the earliest platforms to gain popularity in the country. However, Facebook quickly overtook Orkut to become the dominant social media platform in India. **(Present Status)** Social media has had a significant impact on the constitutional right to privacy. Users often share personal information on social media platforms without fully understanding the security and privacy terms and conditions, making them vulnerable to various attacks and privacy breaches. **(Short Explanation)** This research paper has put emphasis on Regulating social media Constitutional Perspective. It also discusses social media laws in India that is Information Technology Act, 2000 [IT Act]. The IT Act serves as the foundation for online regulation in India as it provides a legal framework for addressing issues related to cybercrimes, electronic commerce, and data protection. **(Research Problem)** The rapid growth of social media platforms has created unprecedented opportunities for communication, expression, and information dissemination. However, challenges such as misinformation, hate speech, data privacy breaches, and electoral manipulation. Efforts to regulate these platforms raise complex constitutional questions, particularly concerning the balance between protecting fundamental rights, such as freedom of speech and privacy, and addressing societal harms. **(Hypothesis)** Increased regulation of social media platforms will lead to a reduction in harmful content but may inadvertently restrict freedom of speech and expression, potentially violating constitutional rights. Existing regulatory approaches often struggle to reconcile the constitutional guarantees of free expression with the need to mitigate the negative impacts of social media. **(Conclusion)** Regulating social media within the bounds of constitutional principles requires a careful balance between protecting freedom of speech and ensuring accountability for harmful content.

Key Words: privacy breach, unprecedented, electoral manipulation, perspective, exposure, persistent communities, inadvertently, potentially violating, dissemination.

INTRODUCTION

The rise of social media has fundamentally transformed how individuals communicate, access information, and participate in democratic processes. Platforms like Facebook,

Twitter, Instagram, and TikTok have become digital public squares, where people exchange ideas, build communities, and engage in political discourse. While these platforms have created new opportunities for free expression and global connectivity, they have also introduced challenges, such as the spread of

misinformation, hate speech, privacy violations, and the amplification of extremist content. As these issues have grown in scale and impact, the role of government in regulating social media has become a matter of intense debate.

From a constitutional perspective, regulating social media involves balancing several fundamental rights, such as freedom of speech, privacy, and equality, with the state's responsibility to maintain public order, protect individual dignity, and ensure the integrity of democratic processes. In many democratic societies, constitutions enshrine the right to free speech, providing strong protections against government interference in the expression of ideas. However, these rights are not absolute and may be subject to reasonable restrictions, especially when speech incites violence, spreads false information, or infringes on the rights of others.

The constitutional challenge lies in defining the scope and limits of these restrictions. Governments must navigate the fine line between protecting citizens from harmful online behavior and respecting their right to free expression. For instance, content regulation measures intended to curb hate speech or misinformation may face criticism for suppressing political dissent or infringing on individual liberties. Additionally, there is the question of the role of private companies, such as social media platforms, in enforcing their own content policies. These platforms often act as gatekeepers, making decisions about what content is allowed or removed, raising concerns about transparency, fairness, and accountability.

Moreover, social media regulation intersects with the principle of equality and non-discrimination. Algorithms and content moderation practices on these platforms can inadvertently perpetuate biases, leading to discrimination against certain groups or voices. This raises questions about the responsibility of both governments and platforms in ensuring that social media spaces are inclusive and free

from systemic discrimination, aligning with constitutional guarantees of equal protection and non-discrimination.

Thus, regulating social media through a constitutional lens requires a careful and nuanced approach, balancing individual rights with societal interests. It involves considering the unique role of social media as both a medium of expression and a powerful influencer in contemporary political and social life. As countries grapple with how best to regulate these platforms, constitutional principles serve as a guide to creating laws and policies that respect individual freedoms while addressing the harms that can arise in the digital age. This ongoing challenge highlights the need for a legal framework that adapts to the rapid evolution of technology while remaining rooted in the core values of democratic governance and human rights.

OBJECTIVE

The project aims at exploring the primary objective of regulating social media through a constitutional lens is to balance the protection of fundamental rights with the need to address the challenges posed by digital communication platforms. This approach aims to create a balanced regulatory framework that respects individual rights while ensuring a safe and fair digital environment.

HYPOTHESIS

Regulating social media to reduce harmful content, such as hate speech and misinformation, will enhance public safety and social cohesion but may also risk restricting constitutionally protected free speech, particularly when regulation lacks clear boundaries. Stronger privacy regulations for social media platforms will lead to increased user trust and a greater sense of security, but may challenge the platforms' ability to provide personalized services, impacting their economic model. This hypothesis explores the complexities of balancing the regulation of social media with constitutional values like free

speech, privacy, and equality, while addressing the practical and ethical challenges of governing digital spaces.

RESEARCH METHODOLOGY

To comprehensively study the regulation of social media from a constitutional perspective, a mixed-methods research approach would be appropriate. This involves combining qualitative and quantitative research methods to explore the impact, implications, and effectiveness of social media regulations. Here is an outline of the research methodology:

- **Mixed-Methods Approach:** Combining qualitative and quantitative methods allows for a more holistic understanding of how constitutional principles interact with social media regulations.
- **Qualitative Analysis:** Focuses on legal interpretations, case studies, and interviews with experts.
- **Quantitative Analysis:** Involves surveys, data analysis of regulatory impacts, and statistical analysis of user behavior and perceptions.

REGULATING SOCIAL MEDIA: CONSTITUTION PERSPECTIVE SOCIAL MEDIA

Social media refers to digital platforms and applications that enable users to create, share, and interact with content and communities online. These platforms, such as Facebook, Twitter (now X), Instagram, TikTok, and LinkedIn, have transformed how people communicate, access information, and form relationships. Social media serves as a space for entertainment, business promotion, education, activism, and personal expression. It has revolutionized news dissemination and fostered global connectivity, enabling individuals to engage with diverse perspectives and cultures. However, social media also presents challenges, including the spread of misinformation, cyberbullying, privacy concerns, and addictive behaviors. Its algorithms often amplify polarizing content, influencing public opinion

and societal dynamics. Despite these complexities, social media remains a powerful tool that shapes contemporary life, driving social, political, and economic change worldwide.

The social media constitution perspective explores how constitutional principles like free speech, privacy, equality, and due process interact with the digital platforms that dominate modern communication. Social media amplifies freedom of expression, allowing individuals to share opinions and participate in democratic discourse globally. However, challenges arise when platforms moderate content, raising concerns about censorship and the balance between protecting users from harmful content and preserving open dialogue. Privacy rights face unprecedented tests, as these platforms collect and monetize vast amounts of personal data, often in ways that users might not fully understand or consent to. Furthermore, social media fosters inclusivity by amplifying marginalized voices, but it also exposes gaps in equal access to technology and the internet, highlighting digital divides. As private entities, these platforms operate beyond direct constitutional constraints, leading to debates about whether they should be regulated to uphold public interests and fundamental rights in the digital age.

“The more time you spend in India, the more you realize that this country is one of the world’s greatest wonders—a miracle with a message. And the message is that democracy matters.”

-Thomas Friedmann .

The best way to define social media is to break it down in two terms i.e. media and social. Media is an instrument on communication, like a newspaper or a radio, so social media would be a social instrument of communication.

Social media comprises primarily internet and mobile phone based tools for sharing and discussing information. It blends technology, telecommunications, and social interaction and provides a platform to communicate through

words, pictures, films, and music¹. Social media includes web-based and mobile technologies used to turn communication into interactive dialogue.

Social media can be defined as any web or mobile based platform that enables an individual or agency to communicate interactively and enables exchange of user generated content. Andreas Kaplan and Michael Haenlein define social media as “a group of internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content.”² Web 2.0 is the second stage of development of the Internet, characterized especially by the change from static web pages to dynamic or user-generated content and the growth of social media. So, while Web 2.0 is about creating a social web, it is also about creating a more interactive and responsive web. Web 2.0 ideas have taken on a life of their own. They have taken people and put them on the web, and the idea of a social web has transformed the way we think and the way we do business.

CONSTITUTION OF INDIA

Freedom of Speech and expression is broadly understood as the notion that every person has the natural right to freely express themselves through any media and frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecutions. Freedom of expression is a complex right. This is because freedom of expression is not absolute and carries with it special duties and responsibilities therefore it may be subject to certain restrictions provided by law. Similarly, Article 19 (1) (a) of the Constitution of India also confers on the citizens of India the right “to freedom of speech and expression”.

The freedom of speech and expression means the right to express one’s convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode. It also

includes the right to propagate or publish the views of other people. Article 19(2) provides for a number of grounds for imposing reasonable restrictions on this right. These are the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Only content that falls within these parameters as authorized by law could legitimately be considered “objectionable”.³ Rather than defining a new category of “objectionable speech”, what therefore would be useful is to assess all of India’s laws and policies as they relate to freedom of expression against these standards set by the Constitution. This would ensure that the distinction between content that is socially objectionable and that is legally objectionable remains firmly in place, as it should be. It would at the same time also help to ensure that the Constitution is operationalized as intended by its authors.

Social media has the power to reach the masses and distribute information, which in turn has resulted in everyone acting as a watchdog, scrutinizing the powerful and exposing mismanagement and corruption. Several cyber-crimes, defamation, invasion of privacy, incitement of offences, racist remarks, stalking, abuse, hacking, harassment and many more can be easily committed through social media and once such objectionable content is uploaded, it becomes viral and consequently, very difficult to contain.

Hence, the importance of the State regulating social media also cannot be denied. As long as the interests of people, either individually or collectively are taken care of, there can be no objection to government regulation but the problem arises when, in the name of regulation, it starts censoring i.e. encroaching upon the civil rights of the people viz. freedom of speech and expression etc.

REGULATION OF SOCIAL MEDIA

The Information Technology Act, 2000 act

defines 'Intermediary', and Social Media platforms, as such fall under the definition of intermediaries and are required to follow 'due diligence' as prescribed under the IT Rules. Based on the number of users, on the social media platform intermediaries have been divided in two groups: Social media intermediaries and Significant social media intermediaries. Due Diligence to be followed by intermediaries: In case, due diligence is not followed by the intermediary, safe harbor provisions will not apply to them. The safe harbor provisions have been defined under Section 79 of the IT Act, and protect social media intermediaries by giving them immunity from legal prosecution for any content posted on their platforms. Grievance redressal mechanism is mandatory Intermediaries shall appoint a Grievance Officer to deal with complaints and share the name and contact details of such officers. Grievance Officer shall acknowledge the complaint within twenty-four hours and resolve it within fifteen days from its receipt. Ensuring online safety and dignity of users the intermediaries shall remove or disable access within 24 hours of receipt of complaints of contents that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc. Such a complaint can be filed either by the individual or by any other person on his/her behalf. Need to publish a monthly compliance report mentioning the details of complaints received and action taken on the complaints as well as details of contents removed proactively.⁴ Enabling identity of the originator significant social media intermediaries providing services primarily in the nature of messaging shall enable identification of the first originator of the information. Required only for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order, or of incitement to an offence relating to the above or in relation with rape etc.

An intermediary upon receiving actual knowledge in the form of an order by a court or being notified by the appropriate Govt. or its agencies through authorized officer should not host or publish any information which is prohibited under any law in relation to the interest of the sovereignty and integrity of India, public order, friendly relations with foreign countries etc. The Supreme Court of India issued the directions to the print, electronic or social media to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated. The Supreme Court has struck down the controversial Section 66A of the Information Technology Act, 2000 that made posting "offensive" comments online a crime punishable by jail, as being unconstitutional and against free speech. In the 2019 elections, The Election Commission of India has issued instructions on social media use during election campaigns that require candidates to provide certain information about their social media accounts. Obtain pre-certification or approval of their political advertisements. Report expenditure on campaigning through the internet, including via social media websites. The government has urged the Internet Service Providers (ISPs) to block access to child pornography websites and also requested them to educate its subscribers about the use of parental control filters on devices via messages, emails, invoices, websites and more.

CHALLENGES FACED IN REGULATION OF SOCIAL MEDIA

Regulating social media poses numerous challenges, given the dynamic nature of digital platforms, the diverse range of user interactions, and the implications for constitutional rights. Below are some of the key challenges encountered in this regulatory landscape:

1. Balancing Free Speech and Harm Prevention
 - Defining Limits: Determining what constitutes harmful content (e.g., hate speech, misinformation, or harassment) while

respecting users' rights to free speech can be complex. Over-regulation may suppress legitimate expression.

- **Subjectivity of Content:** The interpretation of what is harmful can vary widely among cultures, legal systems, and individual perspectives, making uniform regulation challenging.

2. .Rapidly Evolving Technology

- **Pace of Change:** The fast-paced evolution of technology and social media platforms can outstrip the ability of regulators to develop and implement effective policies⁵.

- **Emergence of New Platforms:** The rise of new social media platforms and technologies (like AI-driven content generation) complicates the regulatory landscape, requiring continual adaptation.⁶

3. Data Privacy and Protection

- **Complexity of Data Use:** Social media platforms collect vast amounts of user data, and users often do not fully understand how their data is used, shared, or sold. Effective regulation must navigate this complexity while ensuring user privacy.

- **Compliance with Diverse Laws:** Companies operating globally must comply with varying data protection regulations across jurisdictions (e.g., GDPR in Europe, CCPA in California), making compliance burdensome.

The regulation of social media faces significant challenges that stem from balancing constitutional rights with the need for safety and accountability. Addressing these challenges requires collaborative efforts among governments, social media companies, civil society, and users to develop effective, adaptive, and transparent regulatory frameworks that promote the responsible use of social media while safeguarding individual rights.

LAWS RELATING TO REGULATING SOCIAL MEDIA

Laws related to regulating social media must

align with constitutional principles, balancing rights like freedom of expression, privacy, and equality with the need to protect societal interests such as public safety, national security, and dignity. Here's a constitutional perspective on such laws:

1. Constitutional Basis for Regulating Social Media

a. **Freedom of Speech and Expression-** Most democratic constitutions guarantee the right to free expression (e.g., First Amendment in the U.S., Article 19 in the Indian Constitution). However, this right is not absolute and may be limited for specific reasons like public order, security, and morality.⁷

b. **Right to Privacy-** The right to privacy (explicit or implied) safeguards personal data and communications on social media. For example, the General Data Protection Regulation (GDPR) aligns with privacy protections in the EU.

c. **Equality and Non-Discrimination-** Social media must not facilitate hate speech, discrimination, or harassment, aligning with constitutional commitments to equality and non-discrimination.⁸

2. Key Law by Constitutional Context

a. **Article 19(1)(a)-** Guarantees freedom of speech, but Article 19(2) allows reasonable restrictions on grounds like public order, morality, and incitement to offense.

b. **Information Technology (Intermediary Guidelines) Rules (2021)-** Align with constitutional limits on free speech by requiring platforms to remove unlawful content while ensuring transparency in takedown requests.

3. Constitutional Limits on Social Media Regulation

While governments regulate social media to address harm, they must comply with constitutional principles:

a. **Proportionality-** Any restriction on speech must be proportional to the harm

addressed (e.g., narrowly targeting hate speech without stifling legitimate dissent).

b. Necessity- Regulations must be necessary to achieve a legitimate aim, such as public safety or protection of rights.

c. Non-Arbitrariness- Laws must be clear, non-discriminatory, and not arbitrary in their application.

CONCLUSION

The regulation of social media is a complex and evolving issue that intertwines with fundamental constitutional principles, including freedom of speech, privacy rights, and the need for public safety. As social media platforms continue to play an increasingly central role in modern communication and civic engagement, the challenge lies in creating a regulatory framework that both protects individual rights and addresses the societal risks associated with digital interactions.

Effective regulation must strike a delicate balance between upholding the constitutional right to free expression and preventing harm caused by misinformation, hate speech, and online harassment. This requires clear definitions of harmful content, robust mechanisms for content moderation, and transparent policies that promote accountability for both social media companies and users.

Furthermore, the global nature of social media complicates regulation, necessitating international cooperation and the development of consistent standards that respect diverse legal frameworks and cultural contexts. Policymakers must engage in ongoing dialogue with stakeholders, including social media platforms, civil society organizations, and users, to ensure that regulations are informed by diverse perspectives and responsive to the dynamic digital landscape.

As technology continues to advance and the nature of social media evolves, regulatory frameworks must remain flexible and adaptive, embracing innovation while safeguarding

constitutional rights. This includes promoting digital literacy and awareness among users, enabling them to navigate the complexities of social media responsibly.

In conclusion, regulating social media from a constitutional perspective is not merely about imposing restrictions but fostering an environment that promotes democratic values, protects individual freedoms, and encourages responsible use of digital platforms. By embracing a collaborative, informed, and rights-respecting approach to regulation, society can harness the potential of social media to enhance public discourse, empower civic engagement, and contribute to a more equitable digital future.

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