

Freedom of Expression in Digital India: The Role of AI in Shaping Constitutional Boundaries

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ABSTRACT

The fast growth and application of technology and AI (artificial intelligence) in India have led to a lot of changes when it comes to freedom of expression, which is guaranteed under Article 19(1)(a) of the Indian constitution. For our study, we will be examining the influence of technology that utilizes AI, such as social media algorithms, on freedom of expression in this digital era. Although the use of AI technology guarantees freedom of information and freedom to create content, it presents certain challenges as well. The connection between the right to freedom of expression and restrictions that have been put in place in Article 19(2) will be critically analysed in this study. Another issue that will be considered in this research is that of governance in an age when AI is increasingly being used to monitor and filter messages on the Internet. Some of the issues that will be analysed in this study include accountability, due process, and the chilling effect.

With regard to the theory of jurisprudence of the constitutionalizing of law in India in light of the analysis done on artificial intelligence, it can be seen that the regulation of artificial intelligence is essential as far as the aspect of rights is concerned to ensure that there is justice, accountability, and transparency in the process of automation. In conclusion, there are some normative guidelines suggested by the study.

Keywords: Constitutional Boundaries, Digital India, Freedom of Expression, The Role of AI

INTRODUCTION

The freedom of speech within Digital India has been evolving in some ways due to the constitutional provisions, judiciary decisions, and advances in technology. Firstly, one can say that there is an element of freedom of speech and expression as per Article 19(1)(a), whereas Article 19(2) deals with restriction on freedom of speech and expression in relation to the sovereignty, security, and morality. Secondly, one has to consider that in connection with the arrival of the Internet in the 1990s and Digital India being created in 2015, various modes of expression could be used online via social media platforms, blogging and any digital activity. Moreover, there has been an attempt to regulate the technological and informational space through the introduction of the Information Technology Act in 2000. It was planned to introduce the clause regarding making the posting of offensive messages an unlawful act according to Section 66A. However, the verdict in the case of *Shreya Singhal v. Union of India* in 2015 rendered the section unconstitutional because it violated the freedom of speech.

One thing is certain – the adoption of Artificial Intelligence technology in contemporary times has complicated this matter further. The employment of AI technology in the process of moderation and filtration will undoubtedly determine which speech is to dominate the internet world and which speech is to be restricted. While the expectation is that AI technology will be employed to control the proliferation of misinformation and offensive speech, there are several considerations other than those relating to transparency that may arise in regard to this regulatory approach. Hence, it may be stated that the AI technology will become an important tool in regulating freedom of speech and expression in India in the future digital era. Freedom of speech and expression, provided under Article 19(1)(a) of the Constitution of India, has been interpreted traditionally in terms of media such as the press and broadcasting. In this context, it is pertinent to note that with technological advancements, new media of expression have emerged, giving rise to fresh jurisprudence. For example, social

networking sites, online intermediaries, and similar sites have adopted AI technology to moderate the speech on the internet.

This transformation raises critical constitutional questions: when private AI systems regulate speech at scale, do they effectively perform a quasi-state function? If so, should they be subjected to constitutional scrutiny? Moreover, the opacity and potential bias embedded in algorithmic systems challenge established doctrines of transparency, accountability, and proportionality under Indian constitutional law.

This paper seeks to examine whether India's existing legal and constitutional framework is equipped to address these emerging challenges. It argues that AI not only mediates speech but actively reshapes the boundaries of permissible expression, necessitating a re-evaluation of constitutional protections in the digital age.

LITERATURE REVIEW

Scholarly discourse on freedom of expression in India has largely focused on the balance between individual liberty and state-imposed restrictions under Article 19(2). Traditional analyses emphasize judicial doctrines such as proportionality, reasonableness, and the “clear and present danger” test. However, contemporary scholarship increasingly highlights the role of private intermediaries and digital platforms in regulating speech. Recent studies on AI governance argue that algorithmic systems introduce a new paradigm of “automated regulation,” where decisions affecting fundamental rights are made without human oversight. Scholars have pointed out that AI-driven content moderation often lacks transparency and may disproportionately impact marginalized voices due to inherent biases in training data.

In the Indian context, legal scholars have begun examining the implications of the Information Technology Rules, 2021, particularly in relation to intermediary liability and government oversight. Concerns have been raised regarding the potential for over-censorship, especially when platforms employ AI tools to comply with regulatory mandates. At the intersection of constitutional law and technology, emerging literature suggests that the traditional state-centric model of fundamental rights enforcement may be inadequate. Instead, there is a growing call for extending constitutional principles—such as fairness, non-arbitrariness, and accountability—to private digital actors that wield significant control over public discourse.

The expansion of digital technologies and Artificial Intelligence (AI) has transformed the nature of public discourse in India. Freedom of expression, constitutionally guaranteed under Article 19(1)(a), now operates within algorithmically mediated environments controlled by both the state and private entities. This literature review examines how AI reshapes constitutional boundaries, highlighting tensions between free speech, regulation, and technological governance.

Freedom of speech and expression under Article 19(1)(a) is subject to reasonable restrictions under Article 19(2), including public order, decency, and sovereignty. Courts have interpreted this right expansively to include digital expression.

In *Shreya Singhal v. Union of India*, the Supreme Court struck down Section 66A of the IT Act, recognizing the importance of protecting online speech from vague and overbroad restrictions. The Court emphasized the distinction between “discussion,” “advocacy,” and “incitement.”

In *Anuradha Bhasin v. Union of India* affirmed that access to the internet is integral to freedom of expression, requiring that restrictions be proportionate and subject to judicial review.

The landmark privacy judgment in *K.S. Puttaswamy v. Union of India* further strengthened digital rights by recognizing privacy as a fundamental right, influencing debates on surveillance and data governance.

The rise of digital media platforms has brought about an era where the traditional public space has been replaced by what is referred to as the privatized public sphere. In light of the above discussion, social media platforms act as gatekeepers who assign ranks to the distributed information using artificial intelligence. The consequence that arises from the above discussion is that whereas freedoms and rights as enshrined in the constitution were

intended to establish hierarchies between the government and its citizens, digital media platforms have created horizontal relationships between the individual and the state.

In relation to regulation of speech. With regard to regulation using algorithms, this involves the use of technology in regulating content in artificial intelligence. With the situation where an individual cannot understand the speech of another in a different language, it is over-regulated, causing the phenomenon referred to as linguisticism. Thus, Article 14 of equality should ensure that nobody is regulated concerning their online content.

With regard to regulation of online content through the Information Technology Act 2000, the exercise needs to be done in accordance with Section 69A of the IT Act. Concerning government regulation of online content, several things need to be put into consideration. The constitutionality of Section 69A of the IT Act has been determined in the case of *Shreya Singhal vs Union of India*. Some questions on the orders have been raised. The DPDP Act 2023 creates a data governance regime that impacts AI systems dealing with personal data. Despite the improvements in privacy provided by the regime, issues arise concerning the extensive state exemptions and lack of user remedies.

There have to be ways of dealing with some of the issues arising from disinformation, hate speech, and national security concerns. Issues such as Overbroad Censorship, Increased Surveillance and Persecution of Dissidents, and Increased Government Control are some of the issues that may come out. One way of solving this issue is through liability of the social media companies involved in spreading disinformation. Issues like Over-Censorship, Over-Liability, and Viewpoint Discrimination are possible.

AI as a Gatekeeper of Speech

The AI technology is one of the gatekeepers available today regarding controlling the spread of information. Concerning the traditional ways of communicating with masses, their control can be relatively easy. However, in case of controlling the spread of the content through AI technology, the whole process will entirely depend on how these algorithms will be used for this goal. In respect of regulating the content through the use of AI technology, a number of important matters should be taken into account constitutionally speaking. And the very first among these is the problem of bias.

In light of this, the problem of opacity must also come into question. This is because the whole process involved in the demotion or removal or labelling of the material cannot be publicly done. Thus, the decision-making of the algorithm cannot be resolved since there is no way for the user to voice any concerns regarding the decision. Legally speaking, there are problems involving the issue of procedural justice and the right to be heard. Over-censoring is yet another serious problem. The algorithm is wary when it comes to censoring; all content which is legal but could be controversial at the very least gets deleted. Again, as stated above, this results in the chilling effect where the user will think twice before posting any content that is personal and sensitive. It is important to note that, in *Shreya Singhal vs Union of India*, the distinction between harmful and protected speech needs to be determined.

The issue of accuracy arises due to the standardization present in the regulation of the content. According to the Constitution of India, the limitation of the right of expressing oneself must be justified based on its purpose. Artificial intelligence, when used without standardization, will not meet the criteria mentioned above. This is due to the reason that the problem associated with artificial intelligence as an issue of freedom of expression addresses only itself.

The AI technology in companies like Meta Platforms and YouTube is used to delete any posts which may be viewed as “harmful.” The use of AI usually leads to the censorship of speech, particularly the censorship of satire, anti-governmental speech, and speech in regional languages. The use of AI has been highly criticized, especially in the case of *Shreya Singhal v. Union of India* where the chilling effect was condemned. In addition to the censorship of speech, the use of AI usually leads to the preference of particular types of speech over others. AI technology employed by the government the facial recognition technology employed at rallies and predictive policing. It will result in less freedom of expression.

It is pertinent to the following landmark cases, i.e., *K.S. Puttaswamy v. Union of India* (Privacy and Dignity Rights) and *PUCCL v. Union of India* (surveillance). Deepfake video technology with the use of AI technology It can produce false propaganda through political influence and mass-scale production. Regulating the use of the technology while avoiding over-regulation is lawful under Article 19(2) to the extent that it includes maintaining public order and defamation. The use of AI technology by platforms to ensure compliance on the part of governments in a timely manner: Deadline for removal of content → Automatic process. As there is no due process of hearing/compliance with regard to platforms that are conveniently done, the landmark case of *Anuradha Bhasin v. Union of India* (necessity and proportionality) is pertinent.

Judicial Interpretation and Landmark Cases

In India, the importance of the judiciary has been immense in interpreting the constitution in the context of equality between women and men. The Indian judiciary has employed the purposive approach in the interpretation of the provisions of the constitution, thus extending its scope to protect women from any kind of discrimination, whether direct or indirect. As per the judgment delivered by the Supreme Court, discriminating against women at the time of employment based on their marital status is an infringement of Articles 14 and 16 of the constitution. Sexual harassment cases have also been brought forward, which constitute a violation of women's rights under Articles 14 and 15.

Shreya Singhal v. Union of India

The *Shreya Singhal* case judgment (2015) held that Section 66A of the Information Technology Act, 2000 was unconstitutional, as it provided punishment for imprisoning a person who conveyed an "offensive" message to him/her through his/her electronic equipment since it encroached upon the basic right to freedom of speech and expression, as provided under Article 19(1)(a). To explain its decision, the court has described the principle of vagueness as one of the modes of unconstitutionality. Words like "annoying" and "inconvenient" do not have any meaning or definition in the laws, and hence, their usage will be arbitrary on the part of the individual. The principle of vagueness is extremely significant in respect of artificial intelligence because, in the case of content moderation systems using artificial intelligence, community standards prevail, which are quite vague. The second important contribution of the Supreme Court in the freedom of speech case law is that of differentiating between discussion, advocacy, and incitement.

K.S. Puttaswamy v. Union of India

The key points of *K.S. Puttaswamy* judgment of (2017) 10 SCC 1 were made by the court, comprising nine judges, which concluded that privacy is an essential right guaranteed by Article 21. Privacy includes aspects such as informational, bodily and decisional privacy. In addition, this case highlighted the three tests which are used by the state when interfering: Legality, Legitimate aim, and Proportionality. These are easy to apply when assessing issues of AI technologies based on databases, including facial recognition, predictive policing and surveillance. There are threats associated with the digital economy because of profiling and data exploitation. Relevance to AI: Most AI technologies require large amounts of data.

Anuradha Bhasin v. Union of India

The matter of *Anuradha Bhasin* (2020) pertains to the issue of internet ban in Jammu & Kashmir. In this particular instance, the Indian Supreme Court has made observations regarding the usage of internet as a method of expression or speech as a basic right of the individuals. A few basic principles of law, according to the Indian Supreme Court, include that the measures are necessary and proportionate, the period of banning internet cannot be indefinite, and there needs to be judicial review of the same. However, the Indian Supreme Court has failed to confer the basic right of access to the internet as such. But in relation to Article 19(1)(a), it has stressed the importance of the same. The use of artificial intelligence (AI) is largely dependent on digital technology.

Sakal Papers v. Union of India

The case relating to freedom of speech (AIR 1962 SC 305) referred to the issue of invalidating a law relating to controlling the number of pages that can be printed in newspapers. It was ruled by the Court that freedom of speech does not only mean the publication of a piece but also its distribution. Laws that restrict distribution are unconstitutional laws. Distribution can now be conducted through algorithms (news feeds and search engines). Suppression of algorithms amounts to restrictions on distribution.

Bennett Coleman & Co. v. Union of India

In Bennett Coleman case [(1973), it had been proven that there were some indirect effects on the printing press industry due to some restrictions put on the production of newsprint. While hearing the case, the court stated that "the State cannot interfere with freedom of speech indirectly." It is immaterial whether the law enacted is objective or subjective; what matters is its effect on the freedom of expressing ideas. "Freedom of press" according to Article 19(1)(a) also includes regulation of press.

PUCL v. Union of India

In this PUCL case (1997), the issue was that of legal telephonic surveillance and the guidelines for the same were laid down by the Court while discussing the issue of telephone tapping. As per the ruling of the court, the act of communicating via a telephone is a part of privacy, and all forms of surveillances in this respect need to be conducted according to Prior Authorization, Duration, and Review. Surveillance without the guidelines amounts to a violation of Article 21. Contemporary AI surveillance systems are based on technologies like biometrics and face recognition.

Integrated Analysis: Constitutional Principles in the Age of AI

above cases put together form a complete body of case laws which will surely be heavily relied upon in the regulation of artificial intelligence in India: Non-arbitrariness and Clarity, Privacy and Data Protection, Internet Access and Digital Infrastructure, Freedom of Movement and Visibility and Economic Restriction of Speech. In view of the precedent set forth in Shreya Singhal, any laws relating to digital regulations of the freedom of speech must not be arbitrary and vague. Artificial Intelligence that functions under such vagueness would definitely amount to a violation of the Indian Constitution in this respect. Pursuant to Puttaswamy and PUCL, any artificial intelligence that monitors and collects data must comply with the requirements of legality, necessity, and proportionality. According to the precedent set forth in Anuradha Bhasin, internet access forms an integral part of the exercise of fundamental rights. Thus, digital discrimination amounts to being unconstitutional. With respect to the precedent in Sakal Papers, visibility amounts to circulation.

In light of the above-mentioned combination of the decisions, it appears that there are legitimate reasons for believing that the constitution law of India is capable of dealing with issues associated with the development of artificial intelligence and other kinds of digital technologies. Freedom, responsibility, and proportionality have been integrated into the mechanism designed to protect human rights against any infringement that occurs while using new technology. While freedom, responsibility, and proportionality could also be applied to artificial intelligence, some adjustments are inevitable in view of the peculiarity of artificial intelligence relative to the normal actions of the state.

Comparative Perspectives

Comparative scholarship shows different regulatory models:

America, the basis of the regulatory framework is constitutional rights, specifically, those of free exercise of expression provided for in the First Amendment. It means that the policies aimed at controlling content will face severe scrutiny from courts, which creates considerable obstacles for content governance. Additionally, intermediaries cannot be held responsible for third-party content because of the existence of Section 230.

European people use the regulatory and right-based approach wherein the due diligence requirements are set for the moderation of online content provided by service providers. Thus, they should show transparency regarding

their practices regarding the moderation of content that can harm users. At the same time, freedom of expression should not overshadow the basic human rights such as privacy and dignity.

But it seems as though India is using a process that could probably be termed a combination of both methods. While it goes without saying that the country has the basic human rights of freedom of speech and expression as stipulated in Article 19(1)(a) of the Constitution of India, it is clear that the government of India has been very strict when it comes to the regulation of internet media following the introduction of the IT Rules 2021. One could argue that, despite challenges in terms of misinformation, national security, and law and order, there are regulations in India.

Research Gaps

The difficulties that one may consider gaps in the literature review are: No studies conducted on AI moderation in India. Lack of clarity on whose responsibility would be to regulate the organizations behind AI. Not enough understanding by the judiciary of the algorithm's way of making decisions. As there is no legislation, AI moderation cannot be regulated. Technological advancement has resulted in evolution in the concept of freedom of expression. The rigid nature of the nation has changed to a flexible nature.

CONCLUSION

With regards to Digital India, certain changes occur to the freedom of expression because of the emergence of new technologies based on artificial intelligence, defining communication in the digital world. Although freedom of expression is regarded as one of the basic rights guaranteed by the Indian Constitution according to Article 19(1)(a), it is ensured through control over the communication process based on an algorithm of reachability. It should be noted that modern AI technologies do not allow people to communicate anymore but assist in creating this process. This point can be illustrated by the statement in the case *Shreya Singhal v. Union of India* held in the Supreme Court of India, where it is stated that any limitations on the freedom of expression "should be precise, minimal and limited to the aspect of incitement."

Privacy, which is one of the fundamental rights of a human being due to the judgement made by *K.S. Puttaswamy vs. Union of India*, can be associated with freedom of speech due to the fact that the problem of conducting surveillance will arise when artificial intelligence and big data technologies become applied to developing the profile of a person. Excessive attention to surveillance can make people refrain from stating their opinions for fear of negative repercussions, making them unable to join in politics. It might be said that the control of the Internet in India is justified because it defends human rights.

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