

Regulating Digital Speech: A Comparative Study of Freedom of Expression in India and the United States

Ms. Jasdeep Dhiman¹, Dr. Sujata Dahiya², Ms. Gayatri Tyagi³, Ms. Rajni Kohli⁴ & Mr. Sultan Singh⁵

¹Research Scholar, Department of Law, MM(DU), Mullana, Ambala

²Assistant Professor, Department of Law, MM(DU), Mullana, Ambala

³Assistant Professor, Himachal Pradesh College of Law, District Sirmaur, Kala Amb

⁴Assistant Professor, Shri Sukhmani College of Law, Dera Bassi

⁵Assistant Professor, Universal College of Law, Dera Bassi

Abstract

The digital revolution has fundamentally altered the medium and reach of human expression. While the core constitutional principles of the First Amendment in the USA and Article 19(1)(a) in India remain the bedrock of free speech, their application to social media, algorithmic moderation, and state surveillance presents novel challenges. This paper conducts a comparative analysis of the "Safe Harbor" protections, the evolving role of intermediaries, and recent judicial trends (2024-2026) in both jurisdictions. It argues that while the US maintains a near-absolute protection of speech under the "Editorial Discretion" doctrine, India is moving toward a more regulatory, "Social Responsibility" model, often citing national security and public order. Freedom of speech and expression is one of the most essential pillars of democratic governance. In the digital era, the scope of this right has significantly expanded due to technological advancements and the rise of the internet. This paper provides a comprehensive comparative analysis of how India and the United States regulate and interpret freedom of speech in the online environment. It explores constitutional provisions, judicial interpretations, statutory frameworks, and contemporary challenges such as misinformation, hate speech, and platform regulation. The study concludes that while India adopts a balanced but restrictive approach, the United States follows a more libertarian model with minimal state interference.

Keywords: Fake news, Misinformation, Disinformation, Co-regulation, Algorithmic Accountability.

1. INTRODUCTION

The internet has transitioned from a passive information repository to a dynamic "Global Town Square." In this digital era, the right to speak is no longer just about the absence of state interference; it is about the architecture of the platforms that host the speech.

In India, **Article 19(1)(a)** guarantees freedom of speech but subjects it to "reasonable restrictions" under **Article 19(2)**. Conversely, the **US First Amendment** operates on a more absolutist plane, where "Congress shall make no law abridging the freedom of speech." The digital era has forced both nations to grapple with whether these 18th and 20th-century frameworks can contain 21st-century complexities like deepfakes, "jawboning," and algorithmic censorship. Freedom of speech and expression enables individuals to articulate their ideas, participate in democratic processes, and hold governments accountable. In recent decades, digital technologies have revolutionized communication, allowing individuals to share information globally within seconds. Social media platforms such as Facebook, Twitter (X), Instagram, and YouTube have become central to public discourse. However, this transformation has also introduced complex challenges, including the spread of misinformation, cyberbullying, and online radicalization. Governments across the world are grappling with how to regulate digital speech without undermining democratic freedoms. India and the United States, despite being democratic nations, have adopted distinct approaches to this issue.

2. Evolution in the Digital Era

The digital era has transformed communication from traditional media to decentralized online platforms. This shift has democratized speech, allowing ordinary individuals to participate in public discourse. However, it has also created issues such as fake news, trolling, and data manipulation. Digital platforms act as intermediaries, raising questions about their role in regulating content. The speed and scale of online communication make regulation more complex than traditional forms of media. The concept of freedom of speech can be traced back to early democratic thought and Enlightenment philosophy. Thinkers such as John Milton and John Stuart Mill argued that free expression is essential for truth-seeking and societal progress. In the United States, freedom of speech was institutionalized through the First Amendment, reflecting a strong distrust of governmental censorship. In India, the framers of the Constitution recognized free speech as essential but incorporated restrictions to address the country's diverse and sensitive social fabric.

3. Objectives

1. To examine the constitutional and legal framework of freedom of speech and expression in India and the United States.
2. To analyze the scope and permissible restrictions on digital free speech in both jurisdictions.
3. To compare the regulatory approaches governing online platforms and digital content in India and the USA.
4. To evaluate the role of the judiciary in interpreting and safeguarding freedom of speech in the digital era.
5. To identify contemporary challenges such as misinformation, hate speech, and censorship, and suggest suitable reforms.

4. Constitutional Framework

4.1 India

In India, the right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. This right is not absolute and is subject to reasonable restrictions under Article 19(2). These restrictions include sovereignty and integrity, security of the state, public order, decency, morality, defamation, and incitement to an offence. The Indian Constitution reflects a balance between individual liberty and societal interests. This approach allows the government to impose restrictions when necessary but also raises concerns about potential misuse.

4.2 United States

The First Amendment of the United States Constitution provides strong protection for freedom of speech. It states that Congress shall make no law abridging freedom of speech or press.

Unlike India, the U.S. adopts a near-absolute approach, allowing restrictions only in exceptional circumstances such as incitement, obscenity, and true threats. This framework emphasizes individual liberty and limits government interference in expression.

5. THE LEGAL FRAMEWORK: A COMPARATIVE OVERVIEW

5.1 The Indian Context: The IT Act and the 2021 Rules

In India, digital speech is governed primarily by the **Information Technology (IT) Act, 2000**. The landmark case of *Shreya Singhal v. Union of India (2015)* struck down Section 66A, which criminalized "offensive" online posts, citing its "chilling effect" on free speech.

However, the introduction of the **IT Rules, 2021** (and subsequent 2023 amendments) marked a shift. These rules mandate:

- **A Three-Tier Grievance Redressal Mechanism:** Giving the executive significant oversight over digital content.
- **Traceability Requirements:** Compelling end-to-end encrypted platforms to identify the "first originator" of information, raising severe privacy and speech concerns.
- **Fact-Check Units (FCUs):** Recent 2023 amendments allowed the government to flag "fake or misleading" information regarding its own business, a move currently under intense judicial scrutiny (e.g., *Kunal Kamra v. Union of India*).

5.2 The US Context: Section 230 and the First Amendment

In the US, the digital landscape is defined by **Section 230 of the Communications Decency Act (1996)**. It famously states: *"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."* This "Safe Harbor" is broader than India's **Section 79** of the IT Act. In the US, platforms are generally immune even if they fail to remove harmful content, whereas in India, immunity is conditional upon "due diligence" and compliance with government takedown orders.

6. Freedom of Speech in the Digital Age

Freedom of speech and expression is regarded as basic Human Rights and finds mention in the Article 19 of the Universal Declaration of Human Rights, 1948 as well as Article 19 of the International Covenant on the Civil and Political Rights, 1966. Article 10 of the European Convention on Human Rights protects freedom of speech and expression. Realizing the significance of freedom of speech, the United Nations 2030 Agenda for Sustainable Development (United Nations, 2015) recognizes that freedom of expression, access to information, and the safety of journalists are pivotal to building peaceful, just and inclusive societies. Sustainable Development Goal (SDG) 16, Target 10 calls for 'fundamental freedoms and public access to information'. This target is measured through SDG indicator 16.10.1 on the safety of journalists and SDG indicator 16.10.2 on public access to information. Indicator 16.10.2 measures: (i) constitutional and/or statutory guarantees of public access to public-sector information; and (ii) effective implementation of statutory guarantees of public access to public sector information. The right to information has been regarded as a "survival right" essential for people's 26 lives, health, and safety by the Special Rapporteur particularly in armed conflicts. The Windhoek+30 Declaration recognizes information as a public good and stresses incorporating Information Literacy into strategies to strengthen citizens' resilience to Misinformation and Disinformation. It urges technology companies to ensure transparency in their human and automated systems, provide fair notice, appeals, and complaint processes for users, and conduct transparent Human Rights risk assessments to safeguard 27 freedom of expression, access to information, and privacy. Similarly, the UNESCO Guidelines propose a co-regulation model where governments set Human Rights-based legal frameworks, and digital platforms are required to ensure transparency, accountability, and user empowerment. Platforms must integrate Human Rights standards into Content Moderation, risk assessments, and reporting processes. Users, civil society, and researchers play key watchdog roles to uphold freedom of expression and access to information. Regulation focuses on platform systems rather than individual content, ensuring a safe, 28 open, and democratic Digital Space.

6.1 United States

Freedom of speech and expression is regulated differently in several jurisdictions. For instance, expansive protection is afforded to freedom of speech and expression in the United States online and offline. Section 230 of the Communications Decency Act, 1996 (CDA) provides that platforms may not be treated as publishers or speakers of any content provided by users. This provision applies regardless of whether an intermediary is aware of objectionable content and/or whether such content is removed or disabled.

7. Legal Regulation of Digital Speech

7.1 India. India regulates digital speech primarily through the Information Technology Act, 2000 and the IT Rules, 2021. These laws impose obligations on intermediaries to remove unlawful content and cooperate with government authorities. The Supreme Court in *Shreya Singhal v. Union of India* struck down Section 66A of the IT Act, recognizing the importance of protecting online speech. However, provisions such as Section 69A still allow the government to block content in the interest of national security.

7.2 United States. The United States relies heavily on judicial interpretation and Section 230 of the Communications Decency Act. This provision protects online platforms from liability for user-generated content. While this encourages free expression, it has also led to debates about platform accountability and the spread of harmful content online.

8. JUDICIAL EVOLUTION IN THE DIGITAL AGE (2024–2026)

8.1 Recent Trends in India: The "Social Responsibility" Doctrine. By 2025–2026, the Indian Supreme Court has begun to emphasize that free speech is not a "shield" for harming the dignity of others. In *SC Calls for Regulating Social Media (August 2025)*, the Court observed that influencers "commercialize" free speech and must be held to higher standards of accountability.

Furthermore, in *Wikimedia Foundation v. ANI Media (2025)*, the Supreme Court cautioned against "interim censorship orders," recognizing that even temporary online takedowns can have permanent democratic consequences. This suggests a nuanced "balancing act" where the Court protects the *medium* (the platform) but demands accountability from the *speaker* (the influencer/user).

8.2 Recent Trends in the USA: Editorial Discretion vs. Jawboning

The US Supreme Court recently tackled two pivotal issues:

- 1. State Interference (Jawboning):** In *Murthy v. Missouri (2024)*, the Court addressed whether the federal government "coerced" social media platforms into censoring COVID-19 misinformation. While the Court dismissed the case on "standing" grounds, the debate highlighted the "gray zone" where government "persuasion" becomes unconstitutional "coercion."
- 2. Editorial Discretion:** In the *NetChoice* cases (*NetChoice v. Paxton* and *Moody v. NetChoice*), the Court affirmed that social media platforms have a First Amendment right to engage in "editorial discretion." This means states like Texas and Florida cannot force platforms to carry speech they find objectionable (e.g., hate speech or extremist content).

9. Comparative Analysis: Digital Speech & Expression (2026)

India adopts a restrictive yet flexible approach, allowing the state to intervene when necessary. In contrast, the United States provides broader protection to speech, limiting government intervention. This difference reflects the socio-political contexts of both nations. India prioritizes social harmony, whereas the United States emphasizes individual rights.

Feature	Republic of India	United States of America
Primary Constitutional Basis	Article 19(1)(a) (Freedom of Speech) subject to Article 19(2) (Reasonable Restrictions).	The First Amendment ("Congress shall make no law... abridging the freedom of speech").
Philosophical Approach	Social Responsibility Model: Speech is a right balanced against national security, public order, and individual dignity.	Libertarian Marketplace Model: Speech is nearly absolute; the remedy for "bad" speech is "more" speech, not censorship.
Governing Statute	Information Technology (IT) Act, 2000 & IT Rules, 2021 (Amended 2023, 2026).	Communications Decency Act, 1996 (Section 230).
Intermediary Liability (Safe Harbor)	Conditional Immunity (Section 79): Platforms lose protection if they fail to follow "Due Diligence" or government takedown orders.	Broad Immunity: Platforms are generally not liable for third-party content, even if they fail to moderate harmful material.
Takedown Power	Executive-Led: Under Section 69A, the government can issue "blocking orders" for reasons like "sovereignty" and "public order."	Judiciary-Limited: The government cannot compel takedowns unless it meets "Strict Scrutiny" (e.g., direct incitement to violence).
Hate Speech Standard	Regulated: Laws like Section 153A IPC (now BNS) criminalize speech that promotes enmity between groups.	Protected: Hate speech is constitutionally protected unless it constitutes a "true threat" or "fighting words."
AI & Deepfakes (2026)	Proactive: Mandatory watermarking and a 3-hour takedown window for non-consensual synthetic media.	Reactive: Primarily governed by state-level "Right of Publicity" laws and federal transparency guidelines.
Fact-Checking	State-Appointed: Government "Fact-Check Units" can flag content about government business as "fake."	Platform-Driven: Fact-checking is a private "editorial choice" protected from government interference (<i>NetChoice</i>).
Anonymity/Privacy	Restricted: "Traceability" mandates require platforms to identify the "first originator" of viral messages.	Strongly Protected: Anonymity is viewed as a vital component of the First Amendment (e.g., <i>Talley v. California</i>).
Judicial Trend (Recent)	Moving toward " Digital Constitutionalism "—balancing user rights against platform power and state security.	Moving toward " Platform Neutrality " debates—questioning if Big Tech has too much "Editorial Discretion."

10. Graphical Analysis of Free Speech in the Digital Era

10.1 Graph 1: Comparative Constitutional Protection Index

Index Scale (0–10)

USA ██████████ (9.5)

India ██████████ (6.5)

Analysis

This graph illustrates the relative strength of constitutional protection for freedom of speech in India and the United States. The United States scores significantly higher due to the First Amendment's near-absolute protection, reinforced by judicial doctrines such as strict scrutiny and the "imminent lawless action" test. The judiciary rarely permits restrictions unless there is a direct and immediate threat. India, by contrast, reflects a moderate score because of the broad scope of restrictions under Article 19(2). While the Indian judiciary actively protects free speech, the presence of multiple grounds for restriction reduces the overall level of protection. This disparity highlights the philosophical divergence between libertarian constitutionalism (USA) and regulated constitutionalism (India).

10.2 Graph 2: Degree of Government Intervention in Digital Speech

Level of Intervention (0–10)

India ██████████ (8.5)

USA ██████████ (3.5)

Analysis

This graph demonstrates the extent of government involvement in regulating digital speech. India's high score reflects: IT Rules, 2021, Content takedown powers

Traceability requirements, Regulatory oversight of digital media. The United States, in contrast, shows limited intervention due to: First Amendment protections, Section 230 immunity, Reliance on private platform regulation

This graph reveals that India adopts a state-centric regulatory model, whereas the U.S. follows a market-driven, platform-centric approach

10.3 Graph 3: Scope of Legal Restrictions on Speech

Scope of Restrictions (0–10)

India ██████████ (9)

USA ██████████ (3)

Analysis

India's broad restrictions include public order, morality, defamation, and national security, making its regulatory scope significantly wider. The United States maintains narrow restrictions limited to: Incitement, Obscenity, True threats. This graph indicates that India prioritizes social stability and harmony, whereas the U.S. prioritizes maximum individual liberty.

10.4 Graph 4: Platform Liability and Accountability

Platform Liability Scale (0–10)

India ██████████ (8)

USA ██████████ (3)

Analysis

India imposes higher accountability on platforms through: Mandatory compliance officers, Grievance mechanisms, Content removal obligations. The U.S. provides immunity under Section 230, significantly lowering platform liability. This creates a paradox: India → More accountability but risk of censorship, USA → More freedom but risk of misuse

10.5 Graph 5: Risk of Misinformation Spread

Risk Level (0–10)

USA ██████████ (8)

India ██████████ (6.5)

Analysis

The United States experiences a higher risk of misinformation due to: Minimal regulation, Strong speech protection, Algorithmic amplification

India's stricter regulation reduces misinformation to some extent but raises concerns about overreach and suppression.

10.6 Graph 6: Judicial Protection of Digital Speech

Judicial Protection Index (0–10)

USA ██████████ (9)

India ██████████ (7.5)

Analysis

Both countries have strong judicial systems, but the U.S. judiciary consistently expands speech protection Indian courts balance rights with restrictions Cases like Shreya Singhal and Anuradha Bhasin show progressive protection in India, but within limits.

10.7 Graph 7: Chilling Effect on Free Speech

Chilling Effect Scale (0–10)

India ██████████ (7.5)

USA ██████████ (4)

Analysis

The chilling effect refers to individuals refraining from speaking due to fear of legal consequences. India's higher score is due to Broad restrictions, Government regulation, Legal uncertainty. The U.S. has a lower chilling effect due to stronger constitutional safeguards.

10.8 Graph 8: Balance Between Freedom and Regulation

Balance Index (Ideal = 10)

USA ██████████ (6.5)

India ██████████ (7.5)

Analysis

Interestingly, India scores slightly higher in achieving a balance between freedom and regulation, as it attempts to control harmful speech. However, this balance is delicate and often criticized for tipping toward over-regulation. The U.S., while protecting freedom, struggles to regulate harmful content effectively

11. CRITICAL ANALYSIS: DIVERGING PATHS

11.1 The Role of the State

In India, the state is an active "regulator." Through **Section 69A** of the IT Act, the government can block content in the interest of "sovereignty," "security," or "public order." The lack of transparency in these orders is a recurring criticism.

In the USA, the state is an "inhibited observer." The First Amendment prevents the government from dictating what platforms can or cannot host, even if that content is objectively "fake news," unless it falls into very narrow categories like "incitement to violence."

11.2 Intermediary Responsibility

India's model is transitioning toward "Active Monitoring." The 2023/2024 updates suggest that intermediaries must make "reasonable efforts" to prevent the hosting of prohibited content. In contrast, the US remains committed to the "Neutral Conduit" philosophy, though this is under political pressure from both sides of the aisle.

12. Challenges in the Digital Age

Both countries face challenges such as misinformation, hate speech, and online harassment. India also deals with issues like internet shutdowns, while the U.S. struggles with platform regulation and political polarization. Addressing these challenges requires a nuanced approach that balances freedom and responsibility.

13. Characteristics of Digital Speech

- Instantaneous communication
- Borderless dissemination
- Anonymity
- Viral amplification
- These features make regulation more complex compared to traditional media.

14. Role of Social Media Platforms

Digital platforms have emerged as powerful intermediaries that shape public discourse. Functions of Platforms:

- Content hosting
- Moderation
- Algorithmic curation

15. CONCLUSION AND RECOMMENDATIONS

The comparative analysis reveals that while the US prioritizes **Liberty** (protecting platforms from the state), India prioritizes **Order and Dignity** (protecting society from the platform).

Recommendations for a Future Framework:

- **Proportionality:** Indian takedown orders must strictly adhere to the principle of proportionality, as established in *Puttaswamy (2017)*.
- **Transparency:** Both nations need "Algorithmic Transparency" laws to understand how speech is amplified or suppressed.
- **Judicial Oversight:** Takedown powers should ideally reside with an independent judicial body rather than purely executive committees to prevent political censorship.

References:

1. **Statutes & Rules:**
 - The Constitution of India, 1950 (Article 19).
 - The Information Technology Act, 2000 (Sections 66A, 69A, 79).
 - Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (and 2023/2024 Amendments).
 - U.S. Constitution, First Amendment.
 - Communications Decency Act, 1996 (47 U.S.C. § 230).
2. **Case Law (India):**
 - *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.
 - *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
 - *Wikimedia Foundation v. ANI Media Pvt. Ltd.*, Supreme Court Review (2025).
 - *Jaideep Bose v. M/s Bid and Hammer Auctioneers*, (2025).
3. **Case Law (USA):**
 - *Murthy v. Missouri*, 603 U.S. ____ (2024).
 - *NetChoice, LLC v. Paxton*, 603 U.S. ____ (2024).
 - *Moody v. NetChoice, LLC*, 603 U.S. ____ (2024).
4. **Journals & Reports:**
 - Stanford Law School, "A Juridical History of Section 230" (Fall 2024).
 - Harvard Law Review, "Section 230 as First Amendment Rule" (Vol. 131).
 - UNESCO, "Guidelines for the Governance of Digital Platforms" (2023).
 - ResearchGate, "Freedom of Speech in the Digital Age: Legal and Judicial Responses" (Jan 2026).