

RECALIBRATING FREE SPEECH IN THE DIGITAL AGE: EVALUATING GOVERNMENT REGULATION AND FUNDAMENTAL RIGHTS IN INDIA

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ABSTRACT

*The rise of digital platforms has transformed the exercise of free expression in India, empowering citizens to bypass conventional media gatekeepers while simultaneously enabling the rapid spread of hate speech, misinformation and threats to public order. In response, the Indian state has assembled a regulatory architecture spanning the Information Technology Act, 2000, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and provisions of the Bharatiya Nyaya Sanhita, 2023, much of which has attracted constitutional challenge for overbreadth, executive discretion and an absence of procedural safeguards. This paper examines the constitutional foundations of free speech under Article 19(1)(a), the judicially developed proportionality standard governing restrictions under Article 19(2), and the statutory and executive instruments through which digital speech is presently regulated in India. It situates this framework against comparative practice in the United States, the European Union, the United Kingdom, Canada and Germany, and argues that India's digital speech regime, while judicially constrained in principle through decisions such as *Shreya Singhal v. Union of India* and *Anuradha Bhasin v. Union of India*, remains structurally vulnerable to executive overreach because it lacks the legislative precision, procedural safeguards and independent oversight that comparable democracies have developed. The paper concludes by proposing the elements of a rights-respecting statutory framework for digital speech regulation in India.*

KEYWORDS: *Free Speech; Digital Regulation; Article 19; Proportionality; Intermediary Liability*

1. INTRODUCTION

The rise of the internet and digital technologies has disturbed the traditional boundaries of communication. Social media platforms and messaging services have empowered individuals to disseminate information globally, bypassing conventional media gatekeepers, with significant consequences for political participation, activism and public discourse. The same digital infrastructure, however, facilitates the rapid spread of hate speech, misinformation, cyberbullying and threats to public order. In response, the Indian government has introduced regulatory mechanisms including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and proposed legislation such as the Digital India Act, framed as protecting societal interests but frequently criticised as overreaching constitutional guarantees. The central challenge is ensuring that the digital public sphere remains open, inclusive and safe without compromising the democratic values the Constitution enshrines.

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The stakes of getting this balance right extend well beyond individual litigants. Digital platforms have become the primary infrastructure through which Indian citizens exercise political speech, access news, and participate in public deliberation, a shift so complete that regulatory decisions affecting platform obligations, content moderation standards, or encryption now shape the practical boundaries of Article 19(1)(a) far more directly than any single piece of primary legislation. This displacement of constitutional adjudication from Parliament and the courts toward executive rule-making and private platform policy is itself a structural concern this paper returns to throughout: when the operative rules governing speech are set by delegated legislation or by platform terms of service rather than by Parliament, the ordinary checks that legislative process supplies, public debate, committee scrutiny, sunset review, are correspondingly weakened.

1.1 Objectives of the Study

This study explores and evaluates the constitutional tensions inherent in India's current digital speech regulatory framework, and questions its compatibility with the principles of legality, necessity and proportionality recognised in both Indian constitutional jurisprudence and international human rights law.

1.2 Research Methodology

This paper adopts a doctrinal methodology with descriptive, analytical and comparative dimensions, drawing on judicial precedent, statutes, official reports and secondary commentary. The material gathered is critically evaluated through the combined lens of legislative design and judicial interpretation.

2. CONSTITUTIONAL FOUNDATIONS: ARTICLE 19(1)(A) AND ITS JUDICIAL EVOLUTION

Article 19(1)(a) of the Constitution guarantees all citizens the right to freedom of speech and expression, encompassing the freedom to express opinions, disseminate information and receive information in turn. The Supreme Court has described free speech as the "ark of the covenant of democracy," foundational to the development of human personality and democratic governance.¹ In *Romesh Thappar v. State of Madras*, the Court struck down a state order banning the entry of a journal, holding that freedom of speech lies at the foundation of all democratic organisation, and in *Maneka Gandhi v. Union of India*, the Court affirmed that this freedom must be read broadly and in conjunction with the right to life and personal liberty under Article 21.² Judicial interpretation has extended the right well beyond its bare text. Freedom of the

¹ *Sakal Papers (P) Ltd. v. Union of India*, A.I.R. 1962 S.C. 305 (India); *Romesh Thappar v. State of Madras*, A.I.R. 1950 S.C. 124 (India).

² *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

press, though nowhere explicitly mentioned in Article 19(1)(a), has been read into it as an integral component, as the Court held in *Indian Express Newspapers v. Union of India*, while the right to know and receive information was affirmed in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*.³ The right extends equally to the freedom of silence, as the Court recognised in *Bijoe Emmanuel v. State of Kerala*, upholding the right of schoolchildren to abstain from singing the national anthem on grounds of religious conscience while standing respectfully, and to commercial speech, recognised in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*⁴ Artistic expression, including literature, cinema and symbolic gesture, falls squarely within the provision's ambit, as the Court held in *S. Rangarajan v. P. Jagjivan Ram*, emphasising that the State must tolerate unpopular views and that restrictions are justified only where expression poses a real threat to public order.⁵ Most significantly for the analysis that follows, the Kerala High Court in *Faheema Shirin R.K. v. State of Kerala* recognised access to the internet itself as an inseparable facet of both the right to education and the right to privacy under Article 21, a holding of direct relevance to the digital regulatory questions this paper examines.⁶ Taken together, this line of authority establishes a proposition central to everything that follows: the medium through which speech occurs, print, broadcast, or digital platform, does not alter the underlying constitutional character of the expression itself. A restriction that would be unconstitutional if applied to a newspaper or a public meeting does not become constitutionally permissible merely because it is applied instead to a social media post or a messaging application; the technology changes the practical mechanics of enforcement, but Article 19(1)(a) applies with undiminished force to whatever medium citizens choose to exercise it through.

3. REASONABLE RESTRICTIONS AND THE PROPORTIONALITY STANDARD

This expansive right is not unrestricted. Article 19(2) empowers the State to impose reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence. The requirement of reasonableness demands that any restriction bear a direct, proportionate nexus to one of these enumerated grounds rather than operating as an open-ended licence for state discretion, a demand of particular

³ *Indian Express Newspapers v. Union of India*, (1985) 1 S.C.C. 641 (India); *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*, (1995) 2 S.C.C. 161 (India).

⁴ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 S.C.C. 615 (India); *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 S.C.C. 139 (India).

⁵ *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574 (India).

⁶ *Faheema Shirin R.K. v. State of Kerala*, 2019 SCC OnLine Ker 2976 (India).

importance in the digital context where expression is both immediate and capable of viral amplification. The Supreme Court's most consequential intervention in this regard is *Shreya Singhal v. Union of India*, which struck down Section 66A of the Information Technology Act, 2000, a provision criminalising the sending of offensive messages through communication devices, on the ground that its vague and overbroad terms permitted arbitrary, standardless enforcement incompatible with the reasonableness requirement of Article 19(2).⁷ The Court in the same judgment upheld the government's power under Section 69A to block online content in the interest of sovereignty, public order or friendly foreign relations, but conditioned that power on procedural safeguards, including recorded reasons and review by a designated committee.⁸ The law of sedition, formerly codified in Section 124A of the Indian Penal Code and now reframed under Section 150 of the *Bharatiya Nyaya Sanhita* as offences against the sovereignty, unity and integrity of India, has proved similarly contested: in *Kedar Nath Singh v. State of Bihar*, the Court upheld the provision's constitutional validity but confined its application to speech that incites violence or public disorder, a limiting construction the Court applied directly in 2021 to quash sedition proceedings against journalist Vinod Dua over his criticism of the government's pandemic response.⁹ The Court has separately developed a structured proportionality standard, requiring that any restriction on a fundamental right serve a legitimate aim, bear a rational connection to that aim, adopt the least restrictive means available, and strike a fair balance between the right and the competing interest, a test articulated in *Modern Dental College and Research Centre v. State of Madhya Pradesh* and subsequently anchored in the right to privacy in *Justice K.S. Puttaswamy v. Union of India*.¹⁰ This proportionality framework, rather than any single statutory provision, now supplies the operative constitutional standard against which the regulatory instruments examined in the following section must be assessed. The four-part structure of this test is worth setting out precisely because Parts 4 and 5 of this paper return to it repeatedly: a restriction must first pursue a legitimate governmental aim falling within the enumerated grounds of Article 19(2); it must second bear a genuine, evidence-based connection to achieving that aim rather than a merely plausible or asserted one; it must third represent the least restrictive means reasonably available to achieve the aim, such that a broader restriction cannot be justified where a narrower one would serve equally well; and it must fourth strike a proportionate balance between the extent of the infringement and the importance of the interest served. Measured

⁷ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

⁸ *Id.*

⁹ *Kedar Nath Singh v. State of Bihar*, A.I.R. 1962 S.C. 955 (India); *Vinod Dua v. Union of India*, 2021 SCC OnLine SC 414 (India).

¹⁰ *Modern Dental College and Research Centre v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353 (India); *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

against this four-part standard, much of the digital regulatory apparatus examined in Part 4 struggles at the second and third stages in particular, since broad, category-based restrictions are frequently defended by reference to the scale of the underlying harm, misinformation, hate speech, terrorism, without a correspondingly precise showing that the specific restriction imposed is narrowly tailored to that harm rather than sweeping in a substantially broader category of protected expression.

4. STATUTORY AND REGULATORY ARCHITECTURE FOR DIGITAL SPEECH

India's digital speech regime rests on three principal instruments. The Information Technology Act, 2000, enacted primarily to facilitate electronic commerce, has evolved into the principal vehicle for content regulation. Beyond the invalidated Section 66A, Section 69A empowers the Central Government to direct blocking of content, subject to the procedural safeguards Shreya Singhal imposed, while Section 79 grants intermediaries conditional safe harbour from liability for third-party content contingent on the exercise of due diligence.¹¹ This safe-harbour architecture, borrowed conceptually from comparable intermediary liability regimes abroad, was designed on the premise that intermediaries function principally as passive conduits for user-generated content rather than as active curators or amplifiers of it; the increasing use of recommendation algorithms and content ranking by major platforms has placed strain on this premise, since a platform that actively promotes certain content to maximise engagement occupies an intermediate position between passive conduit and active publisher that the safe-harbour framework, drafted before such algorithmic curation became commonplace, does not clearly address. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, issued under this due-diligence framework, substantially expand intermediary obligations: significant social media intermediaries must remove unlawful content within stipulated timeframes, appoint grievance and compliance officers, and, for messaging platforms such as WhatsApp, enable traceability of message originators, while digital news publishers and OTT platforms are placed under a three-tier structure combining self-regulation with oversight by the Ministry of Information and Broadcasting.¹² These Rules have been challenged before several High Courts as exceeding the rule-making power conferred by the parent Act and as imposing a chilling effect on digital

¹¹ The Information Technology Act, No. 21 of 2000, §§ 69A, 79 (India).

¹² The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, rr. 3-4, 9 (India).

news publishers, with the Kerala High Court granting interim protection to online news platforms pending final adjudication of these challenges.¹³

The Bharatiya Nyaya Sanhita, 2023, in replacing the Indian Penal Code, carries forward several provisions with direct application to online expression: Section 194 penalises speech promoting enmity between groups, Section 196 addresses deliberate acts intended to outrage religious feelings, and Section 356 covers criminal defamation, each readily applicable to social media posts, blogs and other digital publication.¹⁴ These provisions illustrate a recurring pattern in Indian digital speech regulation: rather than drafting offences specifically calibrated to the distinctive features of online communication, its scale, anonymity and virality, Parliament has largely carried forward colonial-era offence categories into the digital context with minimal textual adaptation, leaving courts to determine on a case-by-case basis how concepts developed for print-era publication apply to a retweet, a forwarded message, or an algorithmically amplified post. Obscenity and sexually explicit content remain governed by Sections 67, 67A and 67B of the Information Technology Act, with the Supreme Court in *Aveek Sarkar v. State of West Bengal* holding that obscenity must be assessed by contemporary community standards rather than the stricter Victorian-era *Hicklin* test earlier applied in Indian law, a standard that must be applied with particular care to preserve legitimate artistic and journalistic digital content.¹⁵

India presently possesses no independent regulatory authority for digital speech; regulatory power is concentrated in the Ministry of Electronics and Information Technology and the Ministry of Information and Broadcasting, with courts functioning as the principal check on executive discretion, most notably in *Anuradha Bhasin v. Union of India*, where the Supreme Court held that internet-based expression is constitutionally protected and that restrictions such as internet shutdowns must satisfy the tests of necessity, proportionality and legality, and must be time-bound and subject to periodic review.¹⁶ The institutional design this reveals is significant: unlike telecommunications, broadcasting and securities regulation, each of which operates through a dedicated statutory regulator functioning at arm's length from the ministries whose policy the regulator implements, digital speech regulation in India remains directly administered by the same executive ministries that also formulate the underlying policy, a structure that affords no institutional separation between rule-maker and rule-enforcer comparable to what Part 6 shows exists in the British and European models.

¹³ See *LiveLaw Media Pvt. Ltd. v. Union of India*, W.P.(C) No. 6272 of 2021 (Ker. H.C.) (India).

¹⁴ The Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 194, 196, 356 (India).

¹⁵ *Aveek Sarkar v. State of West Bengal*, (2014) 4 S.C.C. 257 (India).

¹⁶ *Anuradha Bhasin v. Union of India*, (2020) 3 S.C.C. 637 (India).

5. CONSTITUTIONAL TENSIONS IN DIGITAL SPEECH REGULATION

Four recurring tensions emerge from the interaction between this statutory architecture and the constitutional standards described in Part 3. The first concerns overbreadth and vagueness: the pattern Shreya Singhal identified in Section 66A, criminalising speech through undefined terms such as "offensive" or "menacing," has re-emerged in the compliance obligations the 2021 Intermediary Rules impose, which critics argue lack the legislative precision Article 19(2) demands and risk functioning as informal pre-censorship despite issuing from delegated rather than primary legislation.¹⁷ This recurrence is doctrinally significant because it suggests that Shreya Singhal's core holding, precise, non-vague statutory language as a condition of constitutional validity, disciplines the legislature's own drafting but has proved considerably less effective at disciplining subordinate rule-making, which occurs through a delegated process attracting far less parliamentary and public scrutiny than primary legislation.

The second concerns the concentration of blocking and takedown power in the executive without meaningful external review; although Shreya Singhal conditioned Section 69A on procedural safeguards, blocking orders in practice remain largely opaque, and the absence of a published, reasoned order accessible to the affected content creator undermines the very safeguard the Court intended to secure. Where a blocking direction is neither published nor communicated with reasons to the party whose content is removed, the formal safeguard of a "reasoned order" becomes, from the perspective of the affected party, indistinguishable from its absence, since a reason that is never disclosed cannot meaningfully be challenged. The third tension arises from the traceability mandate imposed on significant messaging platforms, which sits uneasily against end-to-end encryption and the right to informational privacy the Court recognised as intrinsic to Article 21 in Puttaswamy; the government defends the mandate as necessary to combat child sexual abuse material, terrorism and disinformation, while privacy advocates warn it enables mass surveillance with a particular chilling effect on journalists, whistleblowers and activists.¹⁸ The technical difficulty compounding this tension deserves emphasis: enabling traceability on an end-to-end encrypted platform typically requires either breaking that encryption for all users or attaching identifying metadata to every message sent by every user, regardless of whether that particular user is ever suspected of wrongdoing, a design choice that is difficult to characterise as the least restrictive means of identifying the comparatively small number of messages that are in fact unlawful.

¹⁷ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).

¹⁸ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).

The fourth tension concerns due process: takedown and blocking orders are frequently issued without prior notice to the affected user, without an accessible avenue for appeal, and without independent review, a structural absence of natural justice that the procedural safeguards Anuradha Bhasin required for internet shutdowns have not yet been extended to cover. The cumulative effect of these four tensions is a documented chilling effect: journalists, comedians and ordinary users facing arrest or takedown notices over social media content increasingly self-censor, a dynamic that undermines the democratic function free expression is meant to serve regardless of whether any individual enforcement action is ultimately sustained on appeal. This chilling effect is not merely anecdotal; it follows directly from the structural features identified above, since a regulatory regime combining vague standards, executive-concentrated enforcement power, and weak procedural safeguards will predictably induce anticipatory compliance well beyond what the law, properly construed, actually requires. Content creators facing uncertain, opaque and difficult-to-appeal enforcement risk have every incentive to avoid the boundary altogether rather than test it, producing a pattern of self-censorship considerably broader than the class of speech any individual provision, correctly applied, would actually prohibit. The doctrinal resources to correct this dynamic already exist in Indian constitutional law, legality, proportionality and due process, as Parts 2 and 3 demonstrate; what remains absent is a statutory framework that operationalises these standards prospectively within the regulatory instruments themselves, rather than leaving correction to case-by-case constitutional litigation of the kind that produced *Shreya Singhal* and *Anuradha Bhasin*.

6. COMPARATIVE JURISPRUDENCE: GLOBAL MODELS

Comparative practice illustrates a spectrum of institutional responses to the same underlying tension between digital speech and its regulation. The United States follows a strongly libertarian model under the First Amendment; in *Brandenburg v. Ohio*, the Supreme Court confined permissible restriction to speech directed at inciting imminent lawless action, and in *Reno v. American Civil Liberties Union*, it struck down provisions of the Communications Decency Act restricting indecent online content, affirming that internet speech receives full First Amendment protection, while Section 230 of that same Act grants intermediaries broad immunity from liability for user-generated content.¹⁹ The European Union adopts a more interventionist, rights-balancing model: Article 10 of the European Convention on Human Rights protects expression subject to restrictions necessary in a democratic society, the Court of Justice of the European Union recognised a "right to be forgotten" in *Google Spain SL v. Agencia Española de Protección de Datos*, and the Digital Services

¹⁹ *Brandenburg v. Ohio*, 395 U.S. 444 (1969); *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997); Communications Decency Act of 1996, 47 U.S.C. § 230 (US).

Act of 2022 imposes graduated obligations on very large online platforms concerning content moderation, algorithmic transparency and systemic risk assessment.²⁰ The United Kingdom's Online Safety Act, 2023 vests the media regulator Ofcom with authority to compel removal of illegal content and protect children online while formally preserving freedom of expression, an approach the Court of Appeal tempered in *R (Miller) v. College of Policing* by holding that police recording of a "non-crime hate incident" over a social media post disproportionately interfered with expressive freedom.²¹ Canada permits reasonable limits on expression under Section 1 of its Charter of Rights and Freedoms where demonstrably justified in a free and democratic society, a standard the Supreme Court applied in *R. v. Keegstra* to uphold hate speech legislation on the ground that hate propaganda undermines both democratic participation and the equal dignity of targeted groups.²² Germany's Network Enforcement Act compels platforms to remove manifestly unlawful content, particularly hate speech and Holocaust denial, within twenty-four hours on pain of substantial fines, a proactive model that has drawn criticism for incentivising platforms toward excessive, precautionary removal for fear of penalty.²³

These models offer distinct lessons for India. The American approach demonstrates the value of a narrowly tailored incitement standard over the diffuse categories, offence, annoyance, anti-national sentiment, that have historically characterised Indian regulatory drafting, though India's constitutional tradition, unlike the American First Amendment's near-absolutism, has never treated free speech as trumping all competing interests and is unlikely to adopt the American model wholesale given the very different historical and social context, including India's own experience of communal violence, in which its speech jurisprudence has developed. The European model demonstrates that privacy, transparency and platform accountability can be harmonised through a single, graduated legislative instrument rather than the fragmented executive rules India presently relies upon, and its emphasis on differentiated obligations tied to platform scale offers a particularly transferable template, since it avoids imposing identical compliance burdens on a small regional platform and a global social media company with billions of users. The British experience underscores the value of an independent statutory regulator subject to judicial check, a structure India altogether lacks, while the German experience cautions that aggressive removal timelines without adequate procedural safeguards risk precisely the over-censorship India's own critics

²⁰ Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos*, 2014 E.C.R. (CJEU); Digital Services Act, Regulation (EU) 2022/2065.

²¹ *R (Miller) v. College of Policing*, [2021] EWCA Civ 1926 (UK); Online Safety Act 2023, c. 50 (UK).

²² *R. v. Keegstra*, [1990] 3 S.C.R. 697 (Can.).

²³ Network Enforcement Act (NetzDG), 2017 (Ger.).

allege against the 2021 Intermediary Rules, a cautionary lesson given that India's own takedown timelines under the 2021 Rules are, in some respects, more compressed than Germany's own twenty-four hour standard for manifestly unlawful content. Canada's structured proportionality analysis offers a template compatible with, and indeed already partially mirrored by, the Indian Supreme Court's own proportionality doctrine developed in *Modern Dental College* and *Puttaswamy*, suggesting that India's difficulty lies less in articulating the correct constitutional test than in embedding that test within the ordinary operation of its regulatory machinery.

No single comparator offers a template India could adopt without modification. The American model presupposes a constitutional tradition of speech absolutism that Indian jurisprudence has never shared and is unlikely to adopt given the enumerated grounds already written into Article 19(2) itself. The European Union's institutional capacity to enforce the Digital Services Act rests on a regulatory apparatus built up over decades of harmonising data protection and competition law across twenty-seven member states, an institutional depth India's comparatively young digital regulatory framework does not yet possess. What each comparator does share, and what the recommendations in Part 7 accordingly draw upon, is a recognition that legislative precision, institutional separation between rule-maker and enforcer, and calibrated obligations tied to platform scale are necessary features of any digital speech regime capable of reconciling regulatory effectiveness with continued respect for expressive freedom.

7. TOWARDS A RIGHTS-RESPECTING DIGITAL FRAMEWORK

Drawing on the doctrinal analysis in Parts 2 and 3 and the comparative lessons in Part 6, five elements should anchor a reformed Indian digital speech framework. First, legality and precision: any restriction on digital speech should rest on a validly enacted, narrowly defined statutory standard rather than the open-ended executive rule-making that has produced the 2021 Intermediary Rules, replacing terms such as "offensive" or "anti-national" with harm-based criteria tied to direct incitement or clearly defined categories of unlawful content. Second, proportionality and necessity should be embedded as a mandatory procedural step preceding any takedown or blocking action, requiring the issuing authority to demonstrate a legitimate purpose, a rational connection between the restriction and that purpose, and the absence of a less restrictive alternative, operationalising the test the Court articulated in *Modern Dental College* and *Puttaswamy* within the regulatory process itself rather than leaving it to post hoc litigation. Third, procedural safeguards should be statutorily guaranteed, including reasoned, published takedown orders, prior notice to affected content creators wherever compatible with the urgency of the underlying concern, and an independent grievance or appellate mechanism

modelled on the oversight role Ofcom performs in the United Kingdom, addressing the due process deficit identified in Part 5.

Fourth, any surveillance or traceability mandate should be authorised by law, subject to independent judicial or quasi-judicial oversight, and confined to the narrowest measure necessary to achieve its stated purpose, in keeping with the privacy standard Puttaswamy established; a traceability requirement that necessarily compromises end-to-end encryption for an entire user base to investigate a small number of unlawful messages is difficult to reconcile with the least-restrictive-means component of the proportionality test. A more narrowly tailored alternative, targeted metadata disclosure orders issued by a court or independent tribunal in relation to a specific, identified message already found unlawful, would achieve the same investigative objective without compromising the encryption architecture protecting the communications of the entire user population, and would align India's practice more closely with the targeted, order-based disclosure regimes several of the comparator jurisdictions in Part 6 employ. Fifth, platform accountability should be calibrated to platform scale and function, following the European Digital Services Act's graduated obligations, with mandatory transparency reporting and algorithmic audit requirements for the largest platforms, while avoiding rules that convert intermediaries into default private censors incentivised toward excessive removal. A small, India-specific platform serving a narrow user base should not face compliance obligations identical to those imposed on a global platform serving hundreds of millions of Indian users, since undifferentiated obligations of this kind tend, in practice, to entrench incumbent large platforms best resourced to absorb the compliance cost while disproportionately burdening smaller domestic competitors.

These five elements point toward a single institutional recommendation: Parliament should enact a comprehensive Digital Speech and Platform Accountability Act, consolidating the presently fragmented provisions of the Information Technology Act, the 2021 Rules and the Bharatiya Nyaya Sanhita into a single statute that codifies these safeguards, establishes an independent digital content oversight body accountable to Parliament rather than solely to the executive ministries presently responsible for enforcement, and thereby closes the gap between the constitutional standards Indian courts have already articulated and the regulatory instruments presently in force. Such a statute would not require India to import any single comparator model wholesale; rather, consistent with the comparative analysis in Part 6, it would combine the American emphasis on precisely defined incitement standards, the European approach to graduated platform obligations, the British model of independent regulatory oversight, and the Indian judiciary's own proportionality doctrine into a framework suited to India's particular constitutional structure and federal administrative capacity. The transition from the present patchwork of primary

legislation, delegated rules and penal code provisions to a single consolidated statute would also supply an important practical benefit largely absent from the current framework: a single point of legislative accountability, subject to full parliamentary debate and periodic review, in place of the executive rule-making process through which the most consequential recent changes to India's digital speech regime, the 2021 Intermediary Rules chief among them, have so far been introduced.

8. CONCLUSION

Digital spaces have become the modern public square, the principal forum through which citizens debate, dissent and mobilise. India's constitutional commitment to free expression under Article 19(1)(a), reinforced through decades of expansive judicial interpretation from *Romesh Thappar* to *Faheema Shirin*, supplies ample doctrinal resources to protect this space, and Article 19(2)'s carefully bounded restrictions, refined through the proportionality standard the Court has developed across *Modern Dental College* and *Puttaswamy*, offer a workable template for legitimate regulation. The difficulty lies not in constitutional principle but in regulatory implementation: the instruments presently governing digital speech in India, the residual provisions of the Information Technology Act, the 2021 Intermediary Rules, and the relevant sections of the *Bharatiya Nyaya Sanhita*, have repeatedly reproduced the vagueness, executive concentration and procedural deficiency that *Shreya Singhal* condemned in Section 66A a decade ago.

Comparative practice from the United States, the European Union, the United Kingdom, Canada and Germany demonstrates that no single institutional model offers a complete solution, but that legality, proportionality, independent oversight and calibrated platform accountability recur as necessary features across every functional system examined in this paper. India's path forward lies in consolidating its fragmented, executive-heavy regulatory architecture into a single, rights-respecting statute that gives these already-recognised constitutional standards operative force before, rather than only after, expression has been suppressed. The recurring pattern across the case law reviewed in this paper, a problematic provision or rule struck down or narrowed by the courts, only to be substantially reproduced in the next generation of executive rule-making, suggests that judicial correction alone, however doctrinally sound, cannot supply the durable institutional check that a properly designed statute, with an independent oversight body answerable to Parliament, would provide. Until such a statute exists, India's digital speech regime will remain what this paper has shown it presently is: constitutionally aspirational in its judicial pronouncements, yet structurally vulnerable in its day-to-day administration to precisely the vagueness, opacity and executive discretion the Constitution's free speech guarantee was designed to prevent. Only through

such structural reform can the digital public sphere in India remain what the Constitution intends it to be: open, inclusive, and governed by law rather than discretion.

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