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## The Abuse of Freedom of Speech and Expression Through Internet Censorship

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*This legal research delves into the intricate realm of internet censorship, focusing on its implications for the freedom of speech and expression, particularly in the context of social media regulation in India. Beginning with an exploration of the definition and evolution of social media, the analysis progresses to examine the evolving legal framework surrounding internet censorship, including relevant provisions of the Indian Constitution and laws such as the Information Technology Act and the Indian Penal Code. Drawing upon significant Indian case law, such as *K.A. Abbas v Union of India* & *A<sup>1</sup> nr.* and *Brij Bhushan v State of Delhi*<sup>2</sup>, the study elucidates the judiciary's stance on censorship and its impact on free speech rights. Furthermore, it discusses foreign case law, highlighting the European Court of Human Rights perspectives on online content filtering and the importance of judicial oversight to prevent abuses of power. The research also addresses contemporary challenges and controversies surrounding internet censorship in India, including government control over digital media and the regulation of Over-The-Top (OTT) platforms. It concludes by advocating for the establishment of robust regulations for social media and OTT platforms, underscored by an independent statutory body to ensure compliance and safeguard the public's rights effectively.*

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<sup>1</sup> *K. A. Abbas v Union of India* (1970) 2 SCC 780

<sup>2</sup> *Brij Bhushan v State of Delhi* (1950) SCR 605

<sup>3</sup> Aradhya Singh, 'Regulation Code for OTT Content' (Legal Service India)

<<https://www.legalserviceindia.com/legal/article-8260-regulation-code-for-ott-content.html>> accessed 24 March 2024

**Keywords:** *internet censorship, freedom of speech, freedom of expression, social media regulation, India.*

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## INTRODUCTION

“The more <sup>4</sup>time you spend in India, the more you realize that this country is one<sup>5</sup> of the world’s greatest wonders- a miracle with a message. And the message is that democracy matters.”

- Thomas Friedmann

Internet censorship refers to the control or suppression of information, content, or access to the Internet, typically by governments or other authorities. While censorship may be justified on grounds of national security or protecting public morality, it often encroaches upon the fundamental right to freedom of speech and expression. This legal research analysis explores the phenomenon of internet censorship, focusing on its misuse as a tool to curtail free speech and expression.

## WHAT IS SOCIAL MEDIA?

Social media encompasses primarily internet and mobile phone-based tools designed for sharing and discussing information. It merges technology, telecommunications, and social interaction, offering a platform for communication through text, images, videos, and audio. Social media encompasses web-based and mobile technologies facilitating interactive communication. It can be defined as any web or mobile-based platform enabling individuals or organizations to communicate interactively and exchange user-generated content.

Andreas Kaplan and Michael Haenlein characterize social media as ‘a group of internet-based applications that build on the ideological and technological foundations of Web 2.0, allowing

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<sup>4</sup> Gitanjali Ghosh and Shishir Tiwari, ‘Social Media and Freedom of Speech and Expression: Challenges before the Indian law’ (2013) Academia  
[https://www.academia.edu/4117408/Social\\_Media\\_and\\_Freedom\\_of\\_Speech\\_and\\_Expression\\_Challenges\\_befo\\_re\\_the\\_Indian\\_law](https://www.academia.edu/4117408/Social_Media_and_Freedom_of_Speech_and_Expression_Challenges_befo_re_the_Indian_law)> accessed 03 April 2024

<sup>5</sup> Rohit Raj, ‘Defining Contours of Press Freedom in Backdrop of National Emergency of 1975’ (2008) All India Reporter 155-160

the creation and exchange of user-generated content.<sup>6</sup> ‘Web 2.0’ refers to internet platforms enabling interactive participation by users. ‘User-generated content’ encompasses all forms of content created by individuals on social media platforms. The Organization for Economic Cooperation and Development (OECD) outlines three criteria for content to qualify as ‘user-generated’: It must be available on a publicly accessible website or social networking site, involve a minimum level of creative effort, and be created outside of professional routines and practices.

Mobile social media is another variant, referring to the use of social media in conjunction with mobile devices. It differs from traditional social media by incorporating elements such as the user's current location (location-sensitivity) or the time delay between sending and receiving messages (time-sensitivity), due to its operation on mobile devices.

**The types of social media networks include:**<sup>7</sup>

**Social Networks**<sup>8</sup>: Platforms like Facebook, Twitter, and LinkedIn serve as a web community where people and various brands can connect, share their content, and interact among themselves. They support a variety of activities such as branding, social awareness programs, building friendly relations with their customers, and providing efficient customer services, hence leading the generation through target advertising and helping them develop direct engagement with potential customers.

**Media Sharing Networks**: Instagram, Snapchat, and YouTube focus mainly on sharing visual content for example photos, videos, live streams, YouTube shorts, and Instagram reels. These applications play an important role in brand building by allowing businesses to display their products and demonstrate their services through visually appealing content. They help the

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<sup>6</sup> Meetika Srivastava, ‘SOCIAL MEDIA AND ITS USE BY THE GOVERNMENT’ (*UN Public Administration Network*) <<https://publicadministration.un.org/paconnect/Blogs/ID/16/SOCIAL-MEDIA-AND-ITS-USE-BY-THE-GOVERNMENT>> accessed 28 March 2024

<sup>7</sup> Garima Kakkar, ‘What are the Different Types of Social Media in 2024?’ (*Digital Vidya*, 27 December 2023) <<https://www.digitalvidya.com/blog/types-of-social-media/>> accessed 28 March 2024

<sup>8</sup> *Ibid*

business organization attract users who engage in social media and create opportunities by targeting a specific audience.

**Discussion Forums:** Web communities like Reddit, and Quora provide platforms for users to engage in various discussions, ask queries, share opinions, and exchange information on a variety of topics. Such internet platforms encourage community members to participate in multiple discussions and share their opinions based on their experiences or expertise.

**Image and Video Sharing Sites:** Platforms like Pinterest, Instagram, and Snapchat serve as an important tool for enchanting their customers with visually appealing content and promoting products and services through virtual storytelling. They provide various features like image search, curated collections along user-generated content.

**Micro-blogging:** Platforms like Twitter mostly provide short-form content, allowing users to share brief messages, updates, and links, such platforms create real-time communications and engagements, making them ideal for breaking news and trends. They allow users to connect to a wide crowd of audiences and build concise and impactful business relations.

**Private Community Networks:** private platforms such as Discord, Facebook groups, and WhatsApp groups offer private end-to-end encryptions for the users to interact and share content without hindering their privacy.

### **The evolution of social media regulation in India and its impact on online content governance:**

Social media started gaining momentum in India during the mid-2000s as internet accessibility expanded. Orkut, one of the initial social networking sites, emerged as a popular platform. Nonetheless, Facebook swiftly surpassed Orkut to establish itself as the leading social media platform in the country.

Social media regulation in India has evolved since the Information Technology Act 2000<sup>9</sup>. The legal landscape has grown to address the challenges of digital technology, including data

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<sup>9</sup> Information Technology Act 2000

protection regulations and intermediary guidelines. In 2023, the Indian government introduced stricter rules for social media platforms and their content.

The government has also attempted to determine what constitutes ‘fake information’ and has ordered all media platforms to remove online content. Content providers must ensure that their content meets norms and is good or bad for the public.

The Digital Personal Data Protection (DPDP) Bill 2022<sup>10</sup> was approved by the Union cabinet and was tabled in parliament during the monsoon session.<sup>11</sup>

### CURRENT LEGAL FRAMEWORK

In contemporary times, individuals have the ability to access a vast array of information on the internet at any time and from any location worldwide. The internet holds valuable data for international corporations, as well as information and home delivery services. Thanks to the internet, people can freely express their opinions across various platforms, providing numerous opportunities for freedom of speech and expression. Individuals are empowered to share their viewpoints on a wide range of topics spanning various industries such as politics, the arts, entertainment, sports, and philosophy, among others, as long as it does not adversely affect someone else's mental or physical well-being.<sup>12</sup> However, there is a necessity for internet regulation to address situations where content may be offensive, inappropriate, harmful, or otherwise objectionable. Monitoring such content proves challenging due to the vast quantity of data available online.

The limitations on freedom of speech are outlined in Article 19(2), which specifies the necessary restrictions aimed at preventing social unrest. To enforce these limitations, content available online can be altered or removed using internet censorship tools.

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<sup>10</sup> Digital Personal Data Protection (DPDP) Bill 2022

<sup>11</sup> Kyle Chin, ‘Cybersecurity Regulations in India’ (*Up Guard*, 18 January 2024)  
<<https://www.upguard.com/blog/cybersecurity-regulations-india>> accessed 02 April 2024

<sup>12</sup> Aisha Saifi, ‘Internet Censorship: Freedom of Speech’ (*Juris Centre*, 14 February 2024)  
<<https://juriscentre.com/2024/02/14/internet-censorship-freedom-of-speech/>> accessed 02 April 2024

**State Security:** According to Article 19(2)<sup>13</sup>, the right to free speech may be restricted to safeguard the security of the state. 'Security of State' pertains to situations such as war, rebellion, and insurrection, but does not extend to rioting or unlawful assembly against the State. This implies that limitations on free speech are permissible when it concerns the stability of our nation.

**Incitement to Unlawful Acts:** This clause, introduced by the First Amendment Constitution Act 1951, prohibits the use of free speech to incite violent crimes.<sup>14</sup>

**International Relations:** Introduced by the First Amendment in 1951, this requirement ensures that individuals do not misuse their right to Freedom of Speech, which could harm relations between nations. While the government aims for friendly ties with other countries, it does not excuse stifling legitimate criticism of its international policies.

**Defamation:** Defamation occurs when someone's reputation is endangered or tarnished, either orally or in writing.

**Contempt of Court:** Disrespecting or disparaging a court's orders is considered contempt of court unless analyzing a court decision. There are two categories of contempt: criminal and civil.

**Decency or Morality:** Decency and morality are reflected in restrictions outlined in Sections 292 to 294 of the Indian Penal Code (IPC)<sup>15</sup>. These terms encompass specific criteria to prevent the dissemination of pornographic and questionable content.

**Sedition:** Although not listed in Article 19(2)<sup>16</sup> as a basis for limiting freedom of speech, under English law, attempts to overthrow the government through writing or other actions can lead to lawful repercussions for breaching the restriction on freedom of speech.

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<sup>13</sup> Constitution of India 1950, art 19(2)

<sup>14</sup> Saifi (n 14)

<sup>15</sup> Indian Penal Code 1860, ss 292-294

<sup>16</sup> Constitution of India 1950, art 19(2)

The Information Technology Act 2000 (IT Act) and the Indian Penal Code 1860 (IPC) are the most important Indian laws that deal with internet censorship. The IT Act provides a legal framework for electronic transactions and promotes cybersecurity and data protection.

The Union Government introduced amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, on April 6, 2023, under the Information Technology Act, 2000. These amendments, among other things, mandate social media intermediaries (SMIs) like Twitter and Facebook to inform their users not to share any information flagged as fake or misleading by a fact-checking unit of the Central Government regarding the Union government's business. Failure to comply with this obligation could lead to SMIs losing their immunity from civil or criminal liability for third-party content on their platforms. This stems from Section 79 of the Act, which grants intermediaries immunity provided they adhere to due diligence as outlined in the IT Rules.

The amendment grants the Union government authority to enforce due diligence by SMIs in moderating third-party content to align with the government's version of events. However, the exact method of enforcement remains unclear. It could involve content censorship or flagging content as deceptive. Either way, the objective is to discourage users from sharing information contrary to the government's narrative.

This development raises constitutional questions, particularly concerning freedom of speech under Article 19(1)(a) of the Indian Constitution. While this article guarantees freedom of speech and expression, judicial interpretations have expanded their scope beyond literal interpretation. Past court decisions have rejected the state's monopoly over defining truth and emphasized individuals' autonomy in forming opinions without state interference.

However, these decisions addressed direct state-citizen interactions and not private intermediaries moderating content on behalf of the state. Therefore, the potential chilling effect on speech and the constitutionality of such regulations remain uncertain, pending evidence of their impact. This legal development presents unique challenges, as Indian courts have not extensively addressed cases where the government controls online speech indirectly through intermediaries. Unlike international human rights conventions, India's Constitution does not

explicitly address censorship by non-state actors. Future legal challenges will shape the relationship between social media platforms, users, and the state's authority over freedom of speech and the prevailing truth narrative. The amendments give the government power to decide for itself what information is bogus and exercise wide-ranging powers of censorship. The new regulations threaten freedom of speech and civil liberties in India by restricting speech through executive order rather than legislation.

The Jan Vishwas Act, 2023, which came into effect on November 30, 2023, also amended 183 provisions across forty-two acts, including the Information Technology Act, 2000. The Jan Vishwas (Amendment of Provisions) Act, 2023 aims to make it easier for citizens to live and do business. The act decriminalizes minor offenses and increases fines and penalties to deter people from committing crimes. The act also aims to ensure that citizens, businesses, and government departments do not fear imprisonment for minor, technical, or procedural defaults.

The act amends forty-two laws by decriminalizing offenses under them. For example, the act removes imprisonment provisions for carrying or using non-biodegradable nature-polythene bags in cantonment areas. The act also revises the penalty for falsely representing an article as patented or subject to a patent application in India.

## INDIAN CASE LAW RELATED TO INTERNET CENSORSHIP

### **K A Abbas v Union of India & Anr:**<sup>17</sup>

**Facts:** Khwaja Ahmad, also known as K.A. Abbas (1914-1987), was an Indian filmmaker, journalist, and member of the Kholsa Committee (1969). His documentary, 'A Tale of Four Cities' received an A certification from the Censor Board due to its depiction of prostitution in a Bombay red-light district. Abbas contested the constitutionality of cinema pre-censorship, citing Article 19(1)(a) which guarantees the right to free speech, in the Supreme Court of India. The court ruled in his favor, granting the documentary a U certificate without the mandated cuts by the censor board while affirming the constitutionality of film censorship.

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<sup>17</sup> K. A. Abbas v The Union of India & Anr 1971 AIR 481



**Held:** In his ruling, Chief Justice M. Hidayatullah of the Supreme Court justified film censorship by highlighting the unique characteristics of motion pictures compared to other forms of expression. He emphasized the immediate appeal, adaptability, realism (often surrealism), and ability of films to synchronize sight and sound, resulting in a profound emotional impact. Chief Justice Hidayatullah pointed out that films particularly affect children and teenagers due to their immaturity, leading them to readily suspend disbelief and imitate what they see. Consequently, he advocated for the classification of films into two categories: 'U' films for unrestricted viewing and 'A' films for adult audiences.

**Brij Bhushan v State of Delhi:**<sup>18</sup>

**Facts:** This case raised doubts about the legality of censorship. The chief commissioner of Delhi instructed the printer, publisher, and editor of an English weekly called 'The Organiser' to submit all news and opinions regarding Pakistan, along with pictures and cartoons not sourced from official channels or news agencies, for review before publication, as per Section 7 of the East Punjab Safety Act, 1949. This directive required duplication submission until further instructions were issued.

**Held:** The court nullified the directive, stating that pre-censorship of a newspaper violates press freedom, which is a fundamental aspect of the free speech guaranteed by Article 19(1)(a).

**TATA PRESS v MTNL:**<sup>19</sup> The Supreme Court affirmed that Article 19(1)(a) guarantees the right to engage in commercial speech or advertising as a fundamental aspect of freedom of speech and expression. Consequently, Tata Press, a private company, was permitted to publish the annual buyer's guide for Bombay, including yellow pages with advertisements. This recognition of lawful advertising as a basic right means it can only be restricted for reasons outlined in Article 19(2). Since MTNL's interference with Tata Press's yellow pages was not justified under Article 19(2) for reasons of public interest, the company cannot impose such restrictions. Presently, commercial speech enjoys the same level of protection as any other form of speech.

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<sup>18</sup> *Brij Bhushan & Anr v The State of Delhi* AIR 1950 SC 129

<sup>19</sup> *TATA PRESS v MTNL* (1995) 5 SCC 139

**Anuradha Bhasin v Union of India:**<sup>20</sup> The court<sup>21</sup> opined that the authorities cannot be immune to any exploitation of this kind and even the orders under S. 144<sup>22</sup> cannot be free from the jurisdiction of the court. The court concluded that the internet has become a necessity in modern living and therefore the freedom of speech and expression as well as, the freedom to carry on any profession, occupation, or business online, are part of the fundamental rights under Part III<sup>23</sup> of the Constitution.

However, the court also provided the criteria that will validate the lawless approach when against access to the internet otherwise it would not exist. The proposed orders will undoubtedly enforce the violation of the Fundamental Rights of others; hence, the test of Proportionality which guarantees that there is no unjust deprivation of natural justice shall be exercised.

In this judgment, the court did not abolish the restriction, but it widened the interpretation of some freedoms, for example, Article 10 by including the right of access to the internet which was not comprehended previously in the article and was limited by the situation of the national security. The manner of this judgment did not immediately deliver the ills that have stricken the citizens as a result of these orders, but it determined rules and orders for execution and suspension orders, to curtail the reoccurrence of such action by the government from being abused in the future.

## FOREIGN CASE LAW RELATED TO INTERNET CENSORSHIP

In 2012, the European Court of Human Rights, in the *Ahmet Yildirim v Turkey* case<sup>24</sup>, emphasized that blocking or filtering online content should only occur within a stringent legal framework that ensures judicial review to prevent authorities from abusing their powers. Similarly, in the *Ekin Association v France* case<sup>25</sup>, the Court underscored the importance of a

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<sup>20</sup> *Anuradha Bhasin v Union of India* AIR 2020 SC 1308

<sup>21</sup> 'Anuradha Bhasin v Union of India - Case Study' (*Legal Bonanza*, 24 September 2021)

<https://legalbonanza.com/leading-cases-judgements/anuradha-bhasin-v-union-of-india-case-study/cid5283727.htm> > accessed 02 April 2024

<sup>22</sup> Code of Criminal Procedure Act 1973

<sup>23</sup> Constitution of India 1950, pt III

<sup>24</sup> *Ahmet Yildirim v Turkey* App No 3111/2010

<sup>25</sup> *Ekin Association v France* App No 39288/1998

well-regulated censorship framework that tightly controls the scope of restrictions. Effective judicial review is essential to prevent abuses of power, particularly as filtering mechanisms can infringe upon basic human rights.<sup>26</sup>

In contemporary times, governments worldwide have increasingly resorted to cyber censorship, igniting public outcry. Methods like filtering, blocking, and internet shutdowns routinely violate individuals' freedom of speech. India grapples with internet censorship complexities, permitted under specific circumstances by its Constitution.<sup>27</sup> However, the internet's global nature poses challenges to content control. Dissenting voices face growing hurdles due to government responses to both violent and non-violent dissent. Moreover, vague terms like 'offensive' in social media regulations foster self-censorship and limit differing opinions. India's fragmented legal approach to hate speech further complicates matters, lacking comprehensive legislation. Criticism against internet censorship in India abounds, citing selective blocking and inadequate technical understanding by the government. This includes:

**Government Control over Digital Media:** The government has codified waivers through new rules under the IT Act, which has allowed social media companies to acquire users quickly without worrying about legal liability. This could impact free speech in two ways: internet companies may remove user posts too zealously, and social media firms may selectively take down content. Additionally, there are complex technical issues surrounding litigation related to internet censorship, which may surpass the comprehension of many judges. These include cyberbullying, cyber-racism, cyber-sexism/sexual harassment, and cyber-homophobia. One of the major contentious issues in regulating digital media is the oversight of Over-The-Top (OTT) platforms, which surged in popularity during the COVID-19 lockdown, overtaking traditional daily shows. Platforms like Netflix and Hotstar, accessed through smart TVs, have become primary sources of entertainment. However, conflicts arise due to the portrayal of nudity and

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<sup>26</sup> Subhajit Basu and Shameek Sen, 'Silenced voices: unravelling India's dissent crisis through historical and contemporary analysis of free speech and suppression' (2022) 33(1) *Information & Communications Technology Law* 42-65 <<https://doi.org/10.1080/13600834.2023.2249780>> accessed 20 March 2024

<sup>27</sup> Srushti Kekre, 'Establish Equilibrium Between Freedom of Speech and Censorship Laws' (*NLIU Cell For Studies In Intellectual Property Rights*, 20 January 2022) <<https://csipr.nliu.ac.in/technology/internet-censorship-the-need-to-establish-equilibrium-between-freedom-of-speech-and-censorship-laws/>> accessed 20 March 2024

disturbing themes in some series and films, posing a challenge when accessed by children.<sup>28</sup> In India's evolving society, characterized by a blend of traditional values and modern technology, ensuring the protection of the fundamental right to freedom of speech and expression is paramount for the government. While this right is not absolute, maintaining a balance between these values is crucial for governance and societal cohesion. Currently, the lack of proper regulation for OTT platforms raises concerns about their impact on public morality, order, and health. Establishing rules and regulations for these platforms is essential, given their significant influence in the internet landscape. An independent statutory body should be empowered to enforce compliance, ensuring that media laws are upheld, and the public's rights are effectively protected.

## CONCLUSION

The abuse of internet censorship poses significant threats to freedom of speech and expression, particularly in the context of social media regulation in India. While some restrictions may be justifiable for reasons such as national security and public morality, the overreach of censorship measures undermines the core principles of democracy and individual liberties. To address these challenges, there is a pressing need for robust regulations that strike a balance between protecting public interests and upholding fundamental rights. An independent statutory body should oversee compliance, ensuring that Internet governance fosters a healthy digital ecosystem while safeguarding citizens' rights effectively.

This article has emphasized how social media regulations have changed over time, it has looked at the constitutional guidelines, legislations, and important legal cases that have sparked debates on internet censorship on democracy hence, highlighting the need to balance government interests with personal liberties.

In the end, the misuse of internet censorship presents a major challenge to democratic ideals, personal freedoms, and the credibility of the digital world. India is currently facing difficulties in managing digital governance and must find a way to prioritize both security and basic rights

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<sup>28</sup> Chelcie Agrawal, 'Censorship of Over The Top Platforms in India: A Comparative Study of India and Singapore' (2022) SSRN <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4294043](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294043)> accessed 19 March 2024

as aforementioned creating a regulatory system that democratically and liberally enables India to lead a path towards a dynamic and rights-oriented digital era.