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Review Article

Freedom of Speech and Legal Education in India: Challenges and Opportunities in the Age of Social Media

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Abstract

Social media has been the leading public platform for debate since the coming of the digital era, which is revolutionizing the way Indian citizens enjoy their freedom to express themselves. Though guaranteed by Article 19(1)(a) of the Indian Constitution, the free and often disorderly nature of cyberspace is testing the functionality of its freedom. The boundaries of free expression and the threshold of permissible restrictions under Article 19(2) are also greatly under threat through the emergence of hate speech, disinformation, cancel culture, and internet surveillance. Freedom of speech is the bedrock of democratic life and is constitutionally guaranteed in India under Article 19(1)(a). With the phenomenal rise of social media and digital platforms, the terrain of speech and regulation has transformed beyond recognition. This article considers the challenges and opportunities presented by this digital shift within the sphere of legal education and considers how court jurisprudence, statutory regimes, and scholarship need to react.

This review considers the live tension between free speech and expression in India, the pedagogy of law, and the spread of social media. The review examines substantive Supreme Court jurisprudence, legislation such as the Information Technology Act and Rules, institutional and pedagogical concerns, and potential opportunities. Emphasis is given to how legal education can prepare new legal professionals and citizens to function and construct free speech responsibly in the digital space.

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1. INTRODUCTION

Freedom of speech and expression is assured in Article 19(1)(a) of the Indian Constitution. Yet, it is also open to "reasonable restrictions" under Article 19(2). The times of the digital age in which Facebook, Twitter, WhatsApp, and YouTube dominate have increased opportunities for speech as well as potential for harm, misinformation, hate speech, defamation, and online harassment. The Indian system of legal education has a key responsibility: it trains lawyers, influences the perceptions of the citizenry through constitutional literacy, and moulds future jurists and policymakers. How are law schools preparing students to address speech rights in the digital age? What are the challenges, curricular, doctrinal, and institutional, and what are the opportunities for change? The exponential growth of sites such as WhatsApp, Facebook, Twitter, and YouTube has made speech democratized. The sites, however, also facilitate anonymity, virality, deepfakes, hate speech, "fear speech", and misinformation that multiply both voices and risks. Studies such as those by Saha et al. demonstrate how fear speech quickly traverses Indian WhatsApp groups, frequently evading typical hate speech filters.

Few undergraduate law courses in India provide any exposure to digital rights, media law, data protection, and intermediary regulation. Conventional modules of constitutional law, criminal law address speech doctrines but fail to do justice to social media dynamics. Legal literacy among citizens is rudimentary; few Indians are aware of even basic statutes like marital rights, domestic violence, etc. Legal education is not percolating or empowering sufficient sections of society. Instruction is still lecture-centered, with emphasis on black-letter law and important cases, mostly rote memorization instead of critical analysis of digital-age situations: viral disinformation, algorithmic discrimination, cross-border content flows, cyber defamation, and social media policy. Law clinics virtually never cover digital activism, online grievance redressal, or media litigation. Learning lags actual conditions, internet shutdowns, and takedown notices of life. Future digital lawyers and citizens confront gray areas: satirical speech, influencer material, online activism, trolling versus criticism. But legal education provides minimal courses in media ethics, platform moderation standards, or content creation ethics. Most law schools lack faculty specialty, research facilities, or an aggressive interdisciplinary study integrating law, technology, sociology, and media studies.

The IT Act (2000, amended 2008) criminalized "offensive" or "annoying" online messages under Section 66A. Its vagueness led to arbitrary arrests. Sites were subject to takedown orders under Section 79 and the 2011 Intermediary Guidelines. The Intermediary Guidelines and Digital Media Ethics Code Rules of 2021 are concerning censorship and surveillance as they mandate the use of compliance officers, decrypting encryption for traceability, and intervening within 36 hours of being officially notified. These initial precedents cautiously interpreted boundaries while establishing expansive protection of opinion.

Intellectuals, activists, NGOs, and media under the present political climate have come under closer observation. Some examples are the repression of research centres, government against NGOs, and restrictions on academic freedom. It has served as a chilling device against opposition voices. Platforms such as WhatsApp have been utilized to spread fear speech calling for violence against minority groups in electoral processes and social unrest. Law education needs to sensitize students to the social consequences of mis/disinformation and the limits of recourse under the law. Sharmistha Panoli, arrested on suspicion of hate speech and stepped down from social media to complete her law degree, illustrates the hairline difference between expression and offense. Law students need to be instructed about the limits of speech, intent, and context.

2. Evolution of Free-Speech Jurisprudence in the Digital Era

Ranjit D. Udeshi v. State of Maharashtra (1964) confirmed Section 292 of the IPC and used the British-established Hicklin test of obscenity, restricting free expression later enormously modified in later jurisprudence. Aveek Sarkar v. State of West Bengal (2023) set aside the vintage test and adopted the new community standards test, acknowledging changing mores and favouring expressive freedom. Shreya Singhal v. Union of India (2015) is the leading case. The Supreme Court invalidated Section 66A of the IT Act on vagueness and overbreadth, holding that it was against Article 19(1)(a) and that only "incitement" (and not advocacy or offensive speech) may be restricted. Importantly, the Court also read down Section 79 and related rules, reinforcing a safe harbour for intermediaries, such that platforms need only respond on orders of court-issued takedown notices.

MouthShut.com v. Union of India (clubbing with Shreya Singhal) also stood up for intermediary rights and consumer speech. Subramanian Swamy v. Union of India (2016) upheld criminal defamation laws (IPC Sections 499/500) even against the background of social media. The Court highlighted the tension between free speech and reputation and reiterated that online defamation is subject to the same norms as offline speech. Anuradha Bhasin v. Union of India (2020) addressed internet shutdowns in Jammu & Kashmir. The Court ruled that freedom of speech encompasses the right to access the internet, and internet shutdowns should be proportionate, transparent, short-term in duration, and open to judicial review. Tahseen Poonawalla v. Union of India (2018) touched on hate speech and fake news online, asking the government to actively regulate objectionable content. It generated focus on changing statutory content moderation requirements.

Kaushal Kishore v. State of Uttar Pradesh (2023): A constitution bench ruled that restrictions on speech must stay within Article 19(2) and officers must exercise restraint—a plea for institutional codes of conduct. Media One TV v. Union of India (2022): The Supreme Court invalidated an arbitrary prohibition on a broadcast, repeating that limitations on free media must be supported by evidence. Sustained sedition law challenge: Petitions like SG Vombatkere v. Union of India seek

a Constitution Bench to reconsider Section 124A IPC through the lens of modern proportionality standards. K.S. Puttaswamy (2017) reaffirmed privacy as a basic right; the Aadhaar judgment (2018) excluded Aadhaar linking with social media as obligatory. These establish a paradigm perspective in terms of identity, anonymity, and freedom of expression over the internet. Hemant Malviya (2025): The Court granted interim protection to a cartoonist who was attacked for lampooning public figures, prioritizing proportionality, free speech, and judicial restraint. The ruling foretokens a more evolved stance towards satire and public condemnation. Ali Khan Mahmudabad arrest (2025): The judiciary is weighing the arrest of a scholarly academic for online critical remarks, defying procedural fairness and the freedom of opposition scholars. The Supreme Court summons social media influencers like Samay Raina (May 2025) for mocking persons with disabilities, potentially resulting in new judicial norms for social media behaviour. Dharmasthala burial gag order (July 2025): The Court declined direct challenge to mass media take-down, indirectly declining concerns over prior restraint, gag orders, and open inquiry.

3. Judicial Responses: Key Case Law

Romesh Thappar v. State of Madras (1950) and State of Madras v. V.G. Row (1952) held that restrictions on the criticism of the state are not constitutional. Kedarnath Singh v. State of Bihar (1962), the Court declared criticism of governments is permissible unless in the disguise of promoting violence or public unrest. Shreya Singhal v. Union of India (2015). This is a lead case: the Supreme Court declared Section 66A unconstitutional for offending Article 19(1)(a), being vague and excessive. It read down Section 79 and linked rules so that intermediaries shall remove content only upon receipt of an order of court or the government, and will still have safe harbour protection. The judgment placed importance on the "chilling effect" of vague legislation on freedom of speech. MouthShut.com v. Union of India, Concurrent to Singhal, The MouthShut.com petition was in support of online consumer reviews. The Court held in favour of the petitioners, expanding and interpreting the safeguarding of user-generated content, putting an end to judicial overreach in mandatory take-downs in the absence of court orders.

Anuradha Bhasin v. Union of India (2020), Focused on Internet shutdowns in Jammu & Kashmir, the Supreme Court held that access to the internet is part of freedom of speech and expression. Shutdowns will be proportionate, transparent, and subject to judicial review. Blanket or indefinite reductions were held to be unconstitutional. Indian National Congress v. Union of India (2014) held that online speech can be restricted only where there is a likelihood of real public disturbance. Kamlesh Vaswani v. Union (2015) investigated that intermediaries must block child pornography on an automated basis. Faheema Shirin R.K. v. Kerala (2019) once again confirmed individual choice in expressing opinions online freely without fear of intimidation. Maheshwari v. Union of India (2020) opined that forwarding of content by itself cannot be a ground for liability unless there is intent to incite hatred or violence. Amish Devgan v. Union of India (2020) established a five-factor test for hate speech- content, context, intent, status of the speaker, and impact.

Recent Supreme Court judgments, such as Wajahat Khan (2025), held that speech should be utilized judiciously, not to ignite communal tensions. Hemant Malviya (2025) vindicated that satire is certainly covered by Article 19 but should also encounter self-regulation and discipline. T.M. Krishna v. Union (Madras HC, 2021) defied the 2021 IT Rules for quashing freedom of creative expression. Delhi HC judgments on influencer hate speech interim bail and arrests (Calcutta HC) on hurting sentiments indicate speech-public order tensions. A Supreme Court bail direction to Ali Khan Mahmudabad, restricting social media activity under controversy, indicates the intersection of privacy, speech, and public sensitivity.

4. Challenges in the Digital Age

Fences like "annoyance," "obstruction," "insult" (as in Section 66A), and "public order" do not have clear-cut definitions, allowing arbitrary arrest and overreach. Courts have repeatedly criticized such vagaries. The threat of prosecution or defamation claims causes self-censorship satirical or benign criticism is suppressed, or otherwise, content is taken down in advance by platforms to prevent liability. The 2021 IT Rules, by mandating platforms to respond quickly and maintain compliance officers, could encourage over-removal of content, even lawful speech, due to fear of losing safe harbour protections. Incidents like Rahul Gandhi's defamation case (over comments on Savarkar), Divyakirti's defamation over YouTube remarks, and Medha Patkar's defamation conviction show how political speech and activism are subject to defamation laws and often criminal complaints. Peer-to-peer sites allow fear speech and misinformation to become widespread. Legal mechanisms are having difficulty responding to these, particularly in group-based systems of messaging such as WhatsApp.

All Indian law schools pay attention to the conventional doctrines and statutes but do not address modules on digital speech, platform law, cyberlaw practice, and online harms jurisprudence. The law courses should have: IT Act, Intermediary Rules, and privacy law courses (e.g. Puttaswamy). Shreya Singhal, Anuradha Bhasin, Malayalis case studies. Practical modules on platform policy, notice and takedown, and digital evidence. Law schools need to have clinics with digital rights NGOs so that students can be engaged in PILs, hackathons, censorship evaluation, and policy interactions. In the context of jurisprudence like Hemant Malviya (on satire) and Wazahat Khan (on communal harmony), legal education must introduce ethical reasoning, context-based analysis, and responsible online advocacy. Social media understanding comes from technologists, sociologists, data scientists. Curricula in law need to incorporate cross-disciplinary modules to examine algorithmic moderation, speech analytics, and misinformation detection.

5. Opportunities and Pathways for Reform

The judiciary keeps refining strong standards—from read down intermediaries to internet connectivity as a right, and hate speech tests. These judgments yield rich fodder for legal scholars and teachers. Law graduates can help inform policy discussions on changing the IT Act to simplify definitions, make safeguards in IT Rules more robust, and provide transparency in blocking orders (as in dowrycalculator.com case). Scholars and students can lend support to PILs against abuse of ambiguous provisions, internet shutdowns, bans, or arbitrary intermediary compliance orders as in T.M. Krishna's writ petitions against IT Rules. Digital scholars can undertake empirical research on available platform moderation choices, hate speech mapping, and content takedown patterns to feed law reform and judicial pronouncements.

Law schools may organize workshops, webinars, and school-school interactions to make citizens aware of their rights under Article 19, safe use of the internet, and remedies in law. These can correct misinformation, hate speech, and empower citizens. Law students, faculties, and institutions should interact with concerned authorities e.g., State Law Commissions, Parliamentary Committees, or High Courts filing amici briefs or research reports to current debates on IT Rules, reform of sedition law, and defamation law updation. Case studies need to address recent judgments like Shreya Singhal, Malviya, Mahmudabad, and Media One. Set up digital rights clinics where students work on: Defamation or online hate speech victims' legal aid, public awareness campaigns on digital rights, and Collaborative projects with NGOs and free speech NGOs (such as Internet Freedom Foundation). Law schools should partner with media schools, computer science, psychology, and public policy departments to teach students about algorithmic content moderation, digital literacy, social psychology of disinformation, and policy design. Conduct moot problems on emerging issues, e.g., content moderation and free expression, tracing originator rules and encryption, hate speech thresholds on the internet. Organize symposia and produce student-initiated law reviews on media law and speech rights. Invest in teachers' training in digital law, advanced jurisprudence, an interdisciplinary research cell, and interaction with legal think tanks, which can facilitate renewed teaching and scholarship.

Law schools may utilize online websites to organize awareness campaigns, explainers, and legal clinics that address citizens en masse. This enables users of online rights, secure expression and reporting of illicit matter. Institutions may have policy labs on online speech regulation, AI moderation, reforming Section 124A, digital data law, and platform regulation, shaping law reforms and legislations. Foreign exchange programs of universities on First Amendment jurisprudence, the EU Digital Services Act, and global digital rights infrastructure can open minds. Law schools and Bar Councils may provide specialized CLE courses on media law, IT Act, intermediary liability, digital evidence, social media litigation strategy, and client advisory in the digital era.

Legislature should strictly define the terms of prohibited speech (offensive, menacing, "public order") so that they are not misused. Courts can apply mechanically "proximity test" (e.g. Dr. Ram Manohar Lohia, Ramji Lal Modi) to public order cases. Sites and states should disclose data regarding shutdowns, takedowns, removal requests, and orders. Speech of margin and satirical voices requires greater protection. Legislation should not discourage creative speech, dissent, and criticism, as in many instances. The courts must continue to aggressively monitor shutdowns, takedowns, defamation litigation, and arrests based on proportionality, speech values, or due process. Integrate digital rights, cross-disciplinary analysis, experiential education, and ethical reflection into courses. Perform moot courts, seminars, and guest sessions on cyber speech jurisprudence.

6. CONCLUSION

The rise of social media has reworked Indians' ways of communicating, mobilizing, and arguing. Technology provides never-before-accessible opportunities for democratic engagement but also poses grave threats: unclear laws, surveillance requests, risks of censorship, and chilling effects. India's courts have reacted with fearless judgments Shreya Singhal, Anuradha Bhasin, Amish Devgan, Maheshwari, Hemant Malviya, and so on, establishing a template for strong protection of digital speech rights. But persisting legal uncertainties and executive excesses still imperil free expression. For legal education, this juncture demands a paradigm shift: curricula need to transform by incorporating digital jurisprudence, experiential clinical training, interdisciplinary analysis, and public interest involvement.

India stands at a juncture: social media has ushered in enormous potentialities for expression democratization, but have also underscored threats—fake news, hate speech, arbitrary takedowns, and censoring of dissent. The constitution's guarantee of freedom of speech, through interpretations in jurisprudence like Shreya Singhal, Anuradha Bhasin, and recent orders on satire and academic critique, provides solid railings—hence, still ambiguity. Educating lawyers legally is the solution: through reforming curricula, building virtual clinics, integrating interdisciplinary insights, and fostering public literacy, law schools can empower a new generation of legal professionals and citizens to understand and defend expressive freedoms in India's digital age. This review marks that there are difficulties—legacy legislation like Section 124A, impenetrable IT Rules, privacy speech tensions—but the opportunities are immense. When legal education rises to the challenge, not only does it produce better lawyers, but it also adds to healthy democratic discussion and constitutional culture.

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