Page: 1247-1282 *URL: www.lijdlr.com*

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: https://doi.org/10.70183/lijdlr.2026.v04.54

© 2026 LawFoyer International Journal of Doctrinal Legal Research

Follow this and additional research works at: www.lijdlr.com
Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of any suggestions or complaints, kindly contact (info.lijdlr@gmail.com)
To submit your Manuscript for Publication in the LawFoyer International Journal of Doctrinal Legal Research, To submit your Manuscript Click here

INTERMEDIARY LIABILITY IN INDIA POST 2021 RULES: A CONSTITUTIONAL BALANCE OF FREE SPEECH AND REGULATORY ACCOUNTABILITY

Madhumitha Gopinath[1]

I. ABSTRACT

The rapid expansion of digital communication platforms has significantly transformed democratic discourse in India, raising complex regulatory and constitutional questions regarding the liability of online intermediaries. Public expression is now increasingly mediated through digital intermediaries, particularly social media platforms, which has generated complex legal and constitutional questions regarding their regulation. An original protection of intermediaries under the Information Technology Act, 2000, Section 79, although conditional, was the protection of the so-called safe harbour by intermediaries. But with introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, due diligence has been increased particularly among Significant Social Media Intermediaries. The question that is addressed in this paper is whether the post-2021 regulatory framework is a recalibration of intermediary responsibility as per Article 19(1)(a) of the constitution of India. Based on the successful case law in Shreya Singhal v. Union of India,[2] *the paper examines the application of constitutional precepts of proportionality, procedural protection and reasonable restriction in the digital context based on Article 19(2). Instead of considering the regulatory change as a break with the protection of free speech, this study assesses whether the changing frame indicates an effort at balancing between innovation, accountability, and constitutional freedoms. The paper concludes that the viability of intermediary regulation may be ultimately based on the balanced implementation, transparency, and reiteration of judicial control to make sure that digital regulation keeps in tune with the constitutional values.*

[1] Author is an Advocate at Bar Council of Tamilnadu and Puducherry, (India). Email: madhumithagopinath23@gmail.com

[2] Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India).

© 2026. LawFoyer International Journal of Doctrinal Legal Research (ISSN: 2583-7753)

II. KEYWORDS

Intermediary Liability, Safe Harbour Doctrine, Article 19(1)(a), Proportionality Principle, Digital Constitutionalism.

III. INTRODUCTION

Digital ecosystems in India have experienced an unprecedented growth in the last ten years, through social media, the platforms have become the primary platforms of political participation, commercial activities, and social interactions. The role of the intermediaries in this changing environment is twofold: they facilitate the free expression but also have the technical ability to control the user-created expression. This dual role has prompted regulatory responses aimed at addressing the misuse of digital platforms for unlawful activities, the dissemination of misinformation or 'fake news', and threats to national security.[3]

The Indian law on intermediary liability is statutory and is contained in the Information Technology Act, 2000, which offers qualified protection to the intermediaries through Section 79.[4] In Shreya Singhal v. Union of India, it was made clear that the intermediaries must only remove the content upon receiving actual knowledge in the form of a court order or a lawful government notification. The 2021 Intermediary Rules[5] added new due diligence requirements such as grievance redressal mechanisms, compliance officers, traceability requirements, and takedown procedures that have a time constraint. These changes represent a further trend of digital responsibility.[6] Today the research paper aims to analyse whether this regulatory development can sustain constitutional balance between the freedom of expression and justifiable interests of the state as stated in Article 19(2). The study takes a doctrinal and constitutional approach by focusing more on harmonisation as opposed to confrontation.

---

[3] Vrinda Bhandari & Karan Lahiri, *The IT Rules, 2021 and the Future of Digital Free Speech in India*, 13 Indian Journal of Law & Technology 45, 51 (2021).
[4] Information Technology Act, 2000, No. 21 of 2000, Section 79, Acts of Parliament, 2000 (India).
[5] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India, Feb. 25, 2021.
[6] Gautam Bhatia, *The Supreme Court's Free Speech Jurisprudence in the Age of the Internet: A Study of Shreya Singhal v. Union of India*, 8 NUJS L. Rev. 1 (2015).

A. Research Objectives

1. To examine the development of the intermediary liability in regard to the Information Technology Act, 2000 and the Intermediary Rules of 2021.
2. To analyse the constitutional provisions of freedom of speech under Article 19(1) (a) and reasonable restrictions under Article 19(2) in the digital environment.
3. To evaluate whether the 2021 regulatory framework complies with judicial principles that were established in Shreya Singhal.
4. To explore the ways in which regulatory accountability and free expression can be harmonized in the current constitutional framework.

B. Research Questions

1. How has the concept of safe harbour under Section 79 evolved after the 2021 Intermediary Rules?
2. In what manner do the enhanced due diligence requirements interact with constitutional protections of free speech?
3. Does proportionality and procedure safeguard create a sustainable balance between digital regulation and fundamental rights?

C. Research HYPOTHESIS

The 2021 Intermediary Rules do not abolish safe harbour under Section 79 of the Information Technology Act, 2000, but recalibrate it into a model of conditional accountability. Their constitutional validity depends on proportionate implementation consistent with Articles 19(1)(a) and 19(2) of the Constitution of India.

D. REVIEW OF LITERATURE

1. Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution, OUP (2016)

Gautam Bhatia studies the jurisprudential basis of the doctrine of free speech as provided by Article 19(1)(a) and especially the chilling effect doctrine and proportionality norm as upheld in Shreya Singhal v. Union of India. His theory plays a critical role in the comprehension of how indirectly the constitutionally guaranteed

expression can be stifled through vague or broad regulatory structures, particularly in the digital context. The scholarship gives theoretical foundation in the assessment of the intermediary liability towards the constitutional protection.

2. **Anupam Chander, "How Law Made Silicon Valley", Emory L.J. (2014)**

Anupam Chander focuses on the role played by intermediary immunity models, especially the Section 230 of the American Communications Decency Act in supporting innovation and online economic development. The article presents the thesis that the success of online ecosystems is based on broad safe harbour protection. This view is important in evaluating the idea that the Rules enacted in India in 2021 reflect a transition of the country towards the less innovation-focused approach to immunity and more the compliance-driven accountability.

3. **Justice B.N. Srikrishna, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians, MeitY (2018)**

Although the report by the Srikrishna Committee focuses on the protection of data, it can play a crucial role in discussions on the topic of digital constitutionalism. It stresses on informational privacy as inherent in dignity under Art. 21, in line with Justice K.S. Puttaswamy v. Union of India. The standardized approach of accountability in the report provides current discourse in traceability, encryption, and platform responsibility under the 2021 Intermediary Rules.

4. **Daphne Keller, "Empirical Evidence of 'Over-Removal' by Internet Companies Under Intermediary Liability Laws", Colum. J.L. & Arts (2019)**

Daphne Keller critically evaluates the capacity of the regime of intermediary liability to encourage platforms to remove content when they are supposed to due to the legal liability risk a platform might face. The article with the aid of empirical and doctrinal analysis outlines the dangers of privatized censorship and chilling effects of the obligation to act strictly. This scholarship is also directly applicable to assessing whether the heightened due diligence requirements by India under the 2021 Rules could result in an out-of-proportion limitation of speech.

5. Martin Husovec, "The DSA's Systemic Risk Approach to Intermediary Liability", CML Rev. (2022)

Martin Husovec provides the analysis of the Digital Services Act by the European Union and the systemic risk-based regulatory framework. The article maintains that the EU has ceased to be a passive safe harbour system to a formalized system of accountability of massive online platforms. The work offers the basis of comparison on the regulation of Significant Social Media Intermediaries in India and transition to conditional responsibility, instead of absolute immunity.

E. Research Methodology

The method of research used in this study is a doctrinal and analytical legal research. his work is largely anchored in the analysis of legislative enactments, constitutional provisions, judicial precedents, and subordinate legislation governing intermediary liability in India. It examines the interaction of the regulatory change introduced by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and the constitutional guarantees in Article 19(1) (a) and Article 19(2) of the Constitution of India. The study is qualitative research that it is based on a method of interpreting the constitution instead of an empirical or field research.

IV. CONCEPTUAL FRAMEWORK: INTERMEDIARY LIABILITY

A. Meaning of "Intermediary"

Section 2(w) of the Information Technology Act, 2000[7] gives the statutory definition of the term Intermediary. An intermediary encompasses any individual who on behalf of another individual receives, stores, transmits or performs any service in regard to electronic records. This general definition includes telecom service providers, internet service providers, web-hosting services, search engines, online marketplaces and social media services.

The legislative rationale of this comprehensive definition is to acknowledge the stratum nature of the digital ecosystem. Intermediaries do not usually make the content; they are just like communication in between. Nevertheless, due to their

[7] Information Technology Act, 2000, No. 21 of 2000, Section 2(w), Acts of Parliament, 2000 (India).

dominance in infrastructure services and tools to filter content, they have changed their position as mere intermediaries to becoming active digital gatekeepers. This change has required a more subtle liability system.

B. Safe Harbour Principle

The Information Technology Act, 2000, Section 79[8] provides the principle on the safe harbour, which gives intermediaries protection against liability as regards to third-party material under conditional immunity.

Two major conditions apply to this immunity:

Section 79 of the Information Technology Act, 2000 establishes conditional 'safe harbour' protection for intermediaries with respect to third-party content. Under Section 79(2), immunity applies only where the intermediary:

1. does not initiate the transmission of the information,
2. does not select the receiver of the transmission, and
3. does not select or modify the information contained in the transmission.

In addition to these conditions, the intermediary must observe due diligence requirements prescribed under law.

Section 79(3) further clarifies circumstances in which safe harbour protection ceases, particularly where the intermediary has conspired, abetted, aided, or induced the commission of an unlawful act, or fails to remove or disable access to unlawful content upon receiving legally valid notice.

When intermediaries receive actual knowledge in the form of a court order or a lawful government notification, they are required to remove or disable access to the unlawful material within the prescribed time.

Shreya Singhal v. Union of India, the Supreme Court made it clear that actual knowledge should be construed strictly to avoid imposing arbitrary censorship that enhances procedural protections of free speech.[9]

[8] Information Technology Act, 2000, No. 21 of 2000, Section 79, Acts of Parliament, 2000 (India)
[9] Apar Gupta & Nikhil Pahwa, *Intermediary Liability in India: Chilling Effects of the Information Technology Rules*, 6 Indian J.L. & Tech. 1 (2010).

In this way, the Indian paradigm poses a model of conditional safe harbour, and platform immunity and regulatory responsibility. Additionally, under Section 79(3) of the Information Technology Act, 2000, safe harbour protection is unavailable where the intermediary has conspired, abetted, aided, or induced the commission of an unlawful act.

The doctrine of safe harbour is based on a number of policy considerations:

1. **Protection of Innovation:** Making intermediaries liable to strict liability in regard to user-generated content would be detrimental to the digital entrepreneurship and technological innovation. Conditional immunity enables sites to exist without the fear of legal action in connection with third-party speech all the time.
2. **Free Flow of Information:** The digital platforms are contemporary forums. Safe harbour supports the constitutional importance of free speech by making sure that intermediaries are not over-censored by the possible risk of liability.
3. **Platform Neutrality:** The doctrine makes a difference between the creators and facilitators of content. This division maintains the impartiality of the intermediaries and cannot be perceived as the classical publishers.[10]

C. Observation

The idea of the safe harbour principle is not new to India. In the United States, Section 230 of the Communications Decency Act provides wide immunity to web sites hosting third-party content and is indicative of the solid embrace of free speech and the fair use doctrine of limited liability.

Multiple differences can be noted between the European regulatory strategy under the General Data Protection Regulation and platform responsibility, especially in the context of data protection and privacy requirements. Although GDPR is not a pure

[10] Pranesh Prakash, *Section 79 of the IT Act and the Intermediary Liability Regime in India*, 9 NUJS L. Rev. 45 (2016).

safe harbour law, it is a representation of a framework in which platforms have a structured compliance obligation.

The framework of India can be considered to lie somewhere in the middle way safe harbour coverage but gradually a due diligence requirement is introduced to counter the challenges arising with digital risks.

V. CONSTITUTIONAL FRAMEWORK: FREEDOM OF SPEECH AND REGULATORY BALANCE

A. Article 19(1)(a): Freedom of Speech and Expression in the Digital Age

Article 19(1) (a) of the Constitution of India[11] gives the right to freedom of speech and expression to all citizens of India. Even though the internet dates back after the Constitution was adopted, constitutional interpretation has always appreciated the fact that fundamental rights need to remain dynamic and apply to new forms of communication, such as digital technology. The constitutional text is technologically indifferent; hence protection of the constitutional text does not only apply to the traditional print and broadcast media but extends to online forms of expression.

In modern India, digital platforms are the main arenas of political interaction, economic interaction, cultural interaction, and social interaction. This ecosystem is also mediated by intermediaries who host, transmit and disseminate user generated content. This means that any regulations that regulate intermediaries indirectly and usually have a significant effect on the extent and exercise of speech rights. The protection of expression provided by the constitution should thus be viewed in relation to the regulatory framework that informs digital communication.

Shreya Singhal v Union of India, the Supreme Court confirmed the constitutionality of online speech being equivalent to offline speech. The Court stressed that the limitations on digital expression have to be stringently matched with constitutional standards, and cannot be imprecise, broad, and prone to arbitrary interpretation. The Court severed the principle that constitutional safeguards are not diluted by the

[11] Constitution of India, art. 19(1)(a)

medium of expression by acknowledging the chilling effect doctrine and overturning the Sec 66A of information technology act, 2000.[12]

B. The reasonable restrictions and state interests are stipulated in article 19(2)

Freedom of speech is basic but not absolute. Article 19(2) allows the State to impose reasonable restrictions on the exercise of free speech in the interests of the sovereignty and integrity of India, the security of the State, public order, decency or morality, contempt of court, defamation, and incitement to an offence. Such grounds are constitutionally approved boundaries in which the regulatory intervention can take place.

The virality, the speed, and the sheer reach of online communication give these grounds even more relevance in the digital space. Falsehoods, hate speech, internet crime, and organized online control can have physical impacts manifested on the social structure and institutional wellbeing. At that, the regulatory action toward such concerns is thus placed in the constitutional gap that is provided by Article 19(2).[13]

The question of whether regulation can be made is not constitutional, but it is standard of reasonableness. A restriction should seek a valid purpose, have a rational nexus to the purpose, should adopt the most restrictive mean practicable, and should entail sufficient procedural protection. The principle of proportionality, which is deeply rooted in the Indian constitutional jurisprudence, is the applied test to determine whether the digital regulatory frameworks are appropriately balanced to reflect the state interests and expressive freedoms.[14]

C. Court Interpretation and the Standard of Actual knowledge

In Shreya Singhal v Union of India, it was an important case of setting the jurisprudential boundaries of intermediary liability. Although the main matter in the said case was on the constitutionality of Section 66A in the Information Technology

[12] Information Technology Act, 2000, No. 21 of 2000, Acts of Parliament, 2000 (India).
[13] Constitution of India, art. 19(2).
[14] Shreya Atrey, *Proportionality and the Indian Constitution: A Comparative Perspective*, 14 **Int'l J. Const. L.** 475 (2016).

Act, 2000, the Court also looked at Section 79, which affords safe harbour to the intermediaries.

The Court interpreted the wording of the Section 79, to make it clear that the intermediaries must remove content only upon receipt of a court order or a government notification issued under lawful authority and confined to the grounds specified in Article 19(2).

This reading avoided the situation whereby intermediaries would be forced to decide by themselves on the legality of user content using unofficial complaints. The Court tried to prevent over-self-censorship and, in the process, tried to uphold free expression and did not go beyond the scope of the actual knowledge whilst trying to restrict certain content that could have been done under Article 19(2) as it is constitutionally permissible.

This judicial explanation continues to be in the middle of assessing the major changes in rules, as it highlights the importance of the procedural organization and the factual process of takedowns.

D. Proportionality and Procedural Protections

The contemporary constitutional review demands that the measures of regulation that deal with fundamental rights meet the proportionality test. Proportionality in the context of intermediary liability involves evaluating whether the aim of the regulation is valid, whether the means used in the form of regulation is rationally linked to that end, whether there are other options that can accomplish the same results, and whether there are sufficient procedural limitations against abuse.[15]

The role of procedural fairness is especially significant in the digital regulation. The existence of time-bound compliance commitment, grievance redressal procedures, transparency demands, and access to judicial review all serve as the deterrence against arbitrary implementation. It is the sustainability of the post-2021 intermediary

[15] Tarunabh Khaitan, *A Structured Doctrine of Proportionality in India*, 9 Oxford U. Commonwealth L.J. 19 (2009).

framework, however, which will rely not only on the statutory language, but on how it is applied in keeping with constitutional discipline.

Judicial review still functions as a structural protection, so that regulatory responsibility is not oddly converted into excessive suppression of legitimate speech.

The changing paradigm of intermediary liability is an attempt to balance two pillars of the constitution high values the right to speech and the maintenance of civic order and online responsibility. Instead of taking regulation and freedom as opposites to each other, Indian constitutional jurisprudence views them as values that rely on each other and that need to be fine-tuned.

The constitutional structure does not deny the regulatory authority, but it mandates that such an authority be exercised within organized, proportionate and refusable bounds. The judiciary plays the role of a balancing institution by ensuring that the digital governance is grounded in constitutional values by ensuring that they apply interpretative oversight and proportionality standards. That way, the freedom of expression and regulation responsibility can be the same within a constitutional order with its principles.[16]

VI. THE 2021 INTERMEDIARY RULES: REGULATORY ARCHITECTURE AND COMPLIANCE FRAMEWORK

The Central Government framed the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[17] in relation to its act of rulemaking under the Information Technology Act, 2000. These Rules do not supersede the statutory safe harbour, which is provided by Section 79 of the Act, but they can be effective in that context because they provide specific due diligence requirements to be fulfilled by intermediaries in order to be immune. Essentially, the

[16] Anupam Chander & Uyên P. Lê, *Free Speech and Innovation in the Digital Age*, 47 U.C. Davis L. Rev. 639 (2014).
[17] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India, Feb. 25, 2021.

2021 Rules[18] redesign Section 79 into a more limited-scoped protection measure, based on compliance.

The regulatory architecture is an indication of a change in passive intermediary model to conditional responsibility. Nevertheless, the safe harbour statutory basis still applies, thus, showing that immunity is not removed but conditional on procedural adherence. According to this design, a recalibration of regulations, instead of utter abandonment of the previous legislative intent, is implied.

A. Obligations of Intermediaries Due Diligence

The 2021 Rules provide that all intermediaries must comply with the baseline due diligence requirements. They consist of posting terms of service, privacy policies and user agreements clearly, notification of users that they should not host or transmit illegal material and blocking or shutting down access to illegal material when lawful orders are received. It puts more emphasis on transparency, governance of structured content, instead of substantive censorship.[19]

The paramount institutional change is that of compulsory appointment of a Grievance Officer. The Grievance Officer must acknowledge a complaint within twenty-four hours and dispose of the complaint within fifteen days of its receipt, as prescribed under the Intermediary Rules, 2021. This mechanism would enhance user access and procedural accountability save the constitutional standards regarding speech limitations. The Rules attempt to formalise internal dispute resolution procedures in digital platforms by introducing time-limited grievance redressal into the compliance framework.

B. Significant Social Media Intermediaries (SSMIs)

Social media intermediaries are defined as significant social media entities that have the power to affect people's lives in a positive or negative way.

---

[18] Ministry of Electronics and Information Technology (MeitY), Government of India, *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*, available at https://www.meity.gov.in (last visited Mar. 2026).

[19] Vrinda Bhandari & Karan Lahiri, *The IT Rules, 2021 and the Future of Digital Free Speech in India*, 13 Indian J.L. & Tech. 45 (2021).

The 2021 framework introduces a differentiated regulatory model by creating the category of Significant Social Media Intermediaries (SSMIs). Under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, an intermediary is classified as a Significant Social Media Intermediary when it has more than 50 lakh (5 million) registered users in India, as notified by the Central Government. Such a classification acknowledges that larger platforms will have a correspondingly larger influence on the discourse of the population, the election process, and the information ecosystem.

SSMIs are exposed to increased standards of compliance. Among them are appointment of a Chief Compliance Officer who will ensure compliance with the Act and Rules; a Nodal Contact Person who will liaise with the law enforcement agencies and a Resident Grievance Officer who will deal with complaint redressal. Also, these middlemen are required to release quarterly compliance reports about the content removal and complaint statistics.

The Rules also imply the use of automated means of detecting the presence of some types of outlawed material. Although the purpose of using automated systems is to enhance the efficiency of detection, it brings about wider considerations that concern the accuracy, transparency and protection against over-removal. However, the logic of regulation behind these requirements is proportionate differentiation through systemic impact.

C. Traceability Requirement

Among the most controversial provisions of the 2021 framework is the requirement (that is expected to apply mostly to specific messaging services) to allow determining who was the first originator of the information in particular situations. This traceability is meant to help in the investigation of severe offences that are related to national security, order or serious criminal activities.

The feature overlaps with the technological capabilities, including end-to-end encryption, which leads to the debates about the privacy and data security. The constitutional sustainability of it is determined by strict compliance with the norms of legality, necessity, and proportionality and reliance on the presence of procedural

control. The action is not a blanket surveillance requirement, it is intended to be exercised in a specific scenario, but it is within the lawfully authorised context.

Therefore, the traceability requirement should be interpreted in a constitutional framework that would offset investigative demands with personal privacy and free speech rights.

The constitutional validity of the traceability requirement continues to be under judicial scrutiny before various High Courts, and its long-term sustainability will depend upon judicial evaluation of proportionality and procedural safeguards.[20]

D. Time-Bound Takedown and Content Moderation

The Rules provide fixed terms of time, including the thirty-six hours in some cases, within which access to material subject to lawful instructions may be removed or disabled. When it comes to both the non-consent of intimate images or content that deals with dignity and safety, the platforms must be highly urgent.

Such time-limited processes strive to solve quick irreparable damage that digital dissemination can inflict. Meanwhile, they remain in statutory framework of Section 79 and approved government guidelines. The structure thus aims at integrating speed with process, as opposed to granting executive intervention that is not regulated.

Article 19(2) provisions are constitutional because they ensure that removal requirements are anchored on justifiable reasons and are carried out in transparent procedures.

E. Institutional Oversight and Grievance Appellate Mechanism

Later changes to the 2021 Rules added a Grievance Appellate Committee system, which gives users a new option to appeal the content moderation decisions on the platform. This layered approach is an indication of an attempt to formalise digital dispute resolution outside the platform mechanisms.

Having a forum of appellate aims at increasing accountability and procedural fairness. Nevertheless, it is also subject to principles of independence, transparency and judicial

[20] Arun Mohan Sukumar, *India's Intermediary Liability Framework and Constitutional Free Speech*, 5 Nat'l L. School India Rev. 112 (2017).

review in its operation. Notably, the presence of constitutional remedies in the courts that are above the High Courts to the Supreme Court makes sure the final interpretive power is left in the hands of the judiciary.[21]

Therefore, the regulatory paradigm incorporates executive, platform, and judicial oversight in a multi-level system of governance.

The Grievance Appellate Committee mechanism was introduced through amendments to the 2021 Rules in 2022, thereby expanding the layered oversight architecture within the intermediary framework.[22]

F. Regulatory Philosophy Underlying the 2021 Rules

The 2021 intermediary framework is a framework that embodies a gradual shift between reactive notice and takedown system to the proactive compliance-based system. It is fundamentally concerned with transparency and accountability, grievance redressal within a time limit and working in collaboration with legal investigations.

Simultaneously, the fact that conditional safe harbour has been preserved in Section 79 of the country suggests that India has not given up on the principle of intermediary immunity. Rather, it has remodelled the terms of such immunity.

The key and the most important thing about this architecture is that its sustainability can be included in the constitution of the country, as long as it is applied in a certain proportion and based on the primary rights jurisprudence. Provided that adopted within the framework of fairness, procedural protection and judicial review, the framework can be viewed as an effort to balance the digital responsibility and constitutional freedom.

[21] Nikhil Pahwa, *Safe Harbour and the Future of Online Speech in India*, 52 Economic & Political Weekly 34 (2017).
[22] Sahana Udupa & Nalin Mehta, *Platform Governance and Regulation in India*, 56 Economic & Political Weekly 34 (2021).

VII. AREAS OF CONSTITUTIONAL SENSITIVITY: PRESERVING EQUILIBRIUM IN DIGITAL GOVERNANCE

The post-2021 intermediary framework is a proposal to enhance the digital accountability in the fast-growing online environment in India. Concurrently, due to the pivotal role of digital platforms as the locus of democratic involvement, electoral communication, market interaction, and civic interaction, some provisions of the broadened compliance regime should be closely constitutional adjusted. This part is not to doubt the competence of legislation in the context of the Information Technology Act, 2000, but rather to investigate the functioning of the constitutional principles in the current regulatory framework. The digital governance, in its turn, lies at the crossroads of free speech, privacy, security and technological innovation; the maintenance of balance between these values becomes a key to the constitutional sustainability.[23]

A. Traceability and the Right to Privacy

The traceability requirement regarding some of the messaging services is one of the most constitutionally sensitive aspects of the post-2021 framework. The reason why it is made possible to identify the first originator of information is to further facilitate investigation in the cases that are related to serious criminal offences, threat to national security or even serious disturbance to the general populace. Traceability helps in improving evidentiary powers that can be used by law enforcement in the kind of environment that digital anonymity can be used illegally, misinformation disseminated, or criminal organizations coordinated.

Nonetheless, most digital communication networks operate on end-to-end encryption schemes that are aimed at guaranteeing privacy of user communications. Encryption is not only a technological aspect but also a structural protection of privacy, news source, corporate privacy, and personal freedom. The constitutional question is therefore not whether the State may regulate digital communications, but whether investigative mechanisms such as traceability can coexist with informational privacy

[23] Shamnad Basheer, *Internet Intermediary Liability in India: The Need for Reform*, 4 Indian J.L. & Tech. 1 (2008).

within a structured constitutional and statutory framework. In this regard, the Digital Personal Data Protection Act, 2023 introduces an additional layer of regulatory safeguards, including obligations relating to lawful data processing, accountability of data fiduciaries, and rights of individuals over their personal data.

These statutory safeguards reinforce the constitutional requirement that any regulatory demand for user identification, traceability, or data disclosure must remain proportionate, legally authorised, and consistent with the evolving data protection regime in India.

The constitutional protection of informational privacy was firmly established in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, where the Supreme Court recognised privacy as a fundamental right under Article 21 and articulated the fourfold test of legality, legitimate purpose, necessity, and proportionality for state action affecting personal data and communication.

The contemporary regulatory landscape has been further shaped by the Digital Personal Data Protection Act, 2023 (DPDPA), which codifies rights of data principals and imposes statutory obligations on data fiduciaries regarding lawful processing, data minimisation, and purpose limitation. The framework established under the DPDPA complements the constitutional principles articulated in *Puttaswamy* by providing a statutory architecture for safeguarding informational privacy in the digital ecosystem.

In the context of intermediary regulation, obligations relating to traceability, data retention, and disclosure of user information must therefore be interpreted in harmony with both constitutional privacy standards and the statutory protections under the Digital Personal Data Protection Act, 2023.

Imposed on intermediary obligations, this means that traceability requirements should have definite statutory force, should be limited to serious offences and should be accompanied by procedural safeguards, i.e., reasoned orders, review mechanisms. On the one hand, traceability can be used as an effective, focused investigative tool instead of a generalized surveillance tool when implemented within these constitutional limitations.

B. Automated Monitoring and Free Speech Concerns

There is another constitutionally sensitive aspect associated with the proactive monitoring and automated content detection systems. The 2021 framework promotes the usage of technology-based tools to be implemented by the major actors in order to detect defined categories of illegal content. It is explained by the magnitude and frequency of digital spread: it is possible that manual review is not enough to avoid damage quickly.

However, automated systems cannot be overly broad and misinterpreted in context. Algorithms might not be able to be sufficiently discerning of the difference between illegal speech and speech that is legally covered by the first amendment as a form of criticism, satire or political dissent. The intermediaries, who want to be afforded the safe harbour protection under Section 79 of the Information Technology Act, can resort to risk adverse moderation that is, to moderation that is also erroneous on the side of removal. This situation casts doubt on the possibility of the chilling effect on lawful expression.

Shreya Singhal v. Union of India, the Supreme Court stressed that dissimilar or excessively broad limitations can deter legal expression. The Court realised that the uncertainty in regulatory standards may lead to self-censorship, which in turn may restrict the freedom indirectly in terms of Article 19(1) (a).[24] As a result, the definition of the prohibited content groups, openness of the moderation and the presentation of the detailed reports on compliance, and the availability of the appeal procedures become the constitutionally appropriate measures. Also, these mechanisms do not weaken regulation but rather enhance it in a way that does not contradict constitutional liberties.

C. Executive Powers and Judicial Oversight

Constitutional reflection is also raised by executive oversight mechanisms vested in the intermediary framework. The directions on content removal, requests on data and compliance coordination are usually issued by recognised government agencies with

[24] Rahul Matthan, *The Law of Intermediaries in India*, 2 Indian J.L. & Tech. 1 (2006).

statutory authority. The major protection in a constitutional democracy is not merely the existence of executive powers, but the manner in which such powers are structured and exercised. In this regard, recent institutional mechanisms such as the Sahyog Portal, launched in 2024 by the Ministry of Home Affairs through the Indian Cyber Crime Coordination Centre (I4C), illustrate the evolving architecture of executive coordination with digital intermediaries. The portal functions as a secure interface through which authorised law-enforcement agencies can transmit lawful requests to intermediaries concerning unlawful online content.

The constitutional relevance of such mechanisms lies in the requirement that executive content-takedown processes remain anchored in legality, procedural fairness, and judicial review, ensuring that regulatory action against unlawful online speech does not undermine the broader guarantees of free expression under Article 19(1)(a).

The limitations should be well within the scope of the grounds listed in the Constitution, e.g. the public order and the State security or the incitement to the crime. Also, there is procedural fairness: written instructions, set deadlines, and justification, which guarantee transparency and reviewability. Aggrieved parties have the right to go to constitutional courts under Article 32 and 226 [25]hence maintaining judicial checks and balances on the executive.

The prevailing existence of the judicial review shows that the intermediary model does not overthrow the judiciary interpretative power. Rather it operates under a stratified institutional framework where executive action is open to constitutional challenge. In this regard, the judiciary does not act as an opposition to the digital governance but as a balancing institution to ensure that the proportional limits are not exceeded.

D. Platform Power and Free Speech

Another aspect of constitutional sensitivity is a direct normative impact of large online platforms themselves. Significant visibility, amplification, ranking, and dissemination of speech are controlled by major intermediaries by algorithmically curating speech.

[25] Constitution of India, arts. 32 & 226.

This kind of privatization of the discourse of the public can influence the democratic narratives in both slight and yet effective aspects.

The regulatory requirements of the 2021 framework can thus be perceived as both a type of state regulation over the platforms and an effort to bring transparency and accountability to the process of decision-making by the privately owned.[26] The constitutional balance is a three-fold relationship between the individual speaker who enjoys free expression, the State who has regulatory authority under Article 19(2) and the platform which has a discretion of moderation under contractual and statutory boundaries.

E. Balancing Rights through Proportionality

Finally, the principle of proportionality is used as a harmonising principle when assessing the area of constitutional sensitivity. Proportionality means that regulatory actions should be effective to achieve legitimate end, affordally linked to those ends, and use the least restrictive means that is reasonably available, and that regulatory actions must be effectively overseen. Such a systematic practice will avoid the problem of regulatory excess and regulatory abdication.

In the case of interpreting and applying intermediary obligations to this constitutional interpretation, accountability and freedom do not necessarily act as counterparts. Rather, they can work as auxiliary pillars of the changing Indian digital constitutionalism. Maintaining the balance of power between security and liberty, privacy and transparency, platform autonomy and user rights is the challenge that characterizes the modern digital governance.

VIII. JUDICIAL INTERPRETATION OF INTERMEDIARY LIABILITY

The judicial interpretation has been the determinant of the outlines of intermediary liability in Section 79 of the Information Technology Act, 2000. Although the statutory framework creates conditional safe harbour protection to intermediaries, the understanding of it and the limitations of its constitutional scope have been defined predominantly by authoritative pronouncements of the Supreme Court. The judiciary

[26] Justice B.N. Srikrishna, *Privacy and Informational Autonomy in India*, 10 NUJS L. Rev. 15 (2017).

has made sure that intermediary regulation does not contradict the guarantees of free speech in Article 19(1)(a) and protection of life and personal liberty of the Constitution in Article 21 of the Constitution.

The case that establishes the precedent in this field is Shreya Singhal v. Union of India, (2015) 5 SCC 1.[27] Even though the case is commonly known to invalidate Section 66A of the IT Act as unconstitutional, its interpretation of the Section 79 cannot be overlooked. The interpretation of the term actual knowledge in Section 79(3)(b) was that the middleman must remove illegal content when a court order is issued or the relevant government authority notifies him or her accordingly in line with the provisions of Article 19(2). The Court denied the suggestion that it should follow that the intermediaries should take action based on just the simple private complaint, since doing so would imply that platforms would have to resolve matters of legality themselves and would no doubt lead to excessive censorship. The Court saved safe harbour protection by restricting the takedown obligations to the legally authorised direction, avoiding the chilling effect on free expression on the Internet.

The constitutionality of the Section 69A of the IT Act and the Blocking Rules, 2009 was also discussed in the case of Shreya Singhal. The Court maintained the validity of the blocking mechanism based on the principle that it had reasonable procedural safeguards, such as the necessity to put the reasons in writing, have an opportunity of hearing, and that it has a review mechanism. This point of the judgment carries significance as it shows that the Supreme Court does not oppose regulatory control over platform of digital nature as such; however, it requires the regulation to be proportional in terms of procedural protection and must not exceed the reasonable limits that are listed in Article 19(2).[28]

The digital regulation constitutional environment was further developed with the historic ruling of nine judges in Justice K.S. Puttaswamy (Retd.). v. Union of India, (2017) 10 SCC 1.[29] With the acknowledgment of privacy as a basic right in Article 21,

[27] Supreme Court of India, *Judgment Information System (JUDIS)*, available at https://main.sci.gov.in (last visited Mar. 2026).
[28] Arghya Sengupta, *Proportionality in Indian Constitutional Law*, 4 Indian J. Const. L. 1 (2011).
[29] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).

the Court has developed a detailed test of the validity of state action that impacts on informational autonomy. The decision made that any limitation on privacy should meet the criteria of legality, legitimate state purpose, necessity, proportionality, and due process. Even though Puttaswamy was not directly related to intermediary liability, its principle has a tremendous effect on determining the requirements of liability including traceability, data preservation, and information disclosure with the later regulatory regulations. Any executive order that interferes with anonymity or encryption of the user now has to survive the proportionality test that was established in this case.

The doctrine of proportionality that is applicable to regulatory systems was expounded in Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.[30] This is the case on which, in a systematic manner, the Supreme Court described the four pronged proportionality test which henceforth evolved to be of the prime importance in the adjudication of privacy and free speech. The Court has stressed the fact that any limitations in the fundamental rights should aim to achieve a lawful goal, it should be rationally related to the aim, it should be needed in the sense that there are no less restrictive means to achieve it, and it should have an adequate balance between the rights of the individual and the interests of the society. This systematic study gives the doctrinal prism of evaluating intermediary regulations in cases of constitutional challenge.

Additionally, it is impregnated with the basic structure doctrine that the constitutional courts have the power to conduct reviews of the executive and delegated legislation that influence the intermediaries. In L. Chandra Kumar v. Union of India, (1997) 3 SCC 261,[31] the Supreme Court confirmed that judicial review based on Articles 32 and 226 is also a necessary provision in the Constitution. This principle is necessary to make sure that regulations based on the IT Act, the executive orders to digital platforms, and blocking or takedown orders can be subject to constitutional review. Therefore,

[30] Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).
[31] L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 (India)

the intermediary liability in India exists as a system of constant judicial oversight, which does not allow arbitrary or disproportionate state intervention.

Recent judicial developments have further clarified the constitutional contours of intermediary liability. In X Corp v. Union of India, W.P. No. 7405/2025 (Karnataka High Court, decided Sept. 24, 2025), the Court upheld the constitutional validity of Section 79(3)(b) of the Information Technology Act, 2000 and Rule 3(1)(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Justice M. Nagaprasanna held that the statutory framework requiring intermediaries to comply with lawful government directions for content removal does not violate constitutional guarantees.

The Court further clarified that foreign corporate entities operating social media platforms cannot independently invoke the protection of Article 19(1)(a) of the Constitution, as the fundamental right to freedom of speech and expression is guaranteed only to citizens. Importantly, the judgment also upheld the constitutional validity of the Sahyog Portal, recognising it as a lawful institutional mechanism enabling coordination between intermediaries and law enforcement agencies for addressing unlawful online content.

This decision represents a significant post-2021 judicial interpretation of intermediary liability, reinforcing the principle that conditional safe harbour operates within a framework of lawful executive directions, procedural safeguards, and continuing judicial oversight.

The relevance of intermediary regulation in India is anchored on the obedience to these constitutional values and perpetual vigilance of the judiciary.[32]

IX. PLATFORM IMMUNITY AND REGULATORY CONTROL: A COMPARATIVE VIEW

An analytical comparison between intermediary liability frameworks shows that different jurisdictions have varying regulatory philosophies. The United States and

[32] Mrinal Satish, *Reasonable Restrictions and Free Speech Jurisprudence in India*, 3 Indian J. Const. L. 45 (2009).

the European Union are two powerful but opposing examples of the digital governance. The placement of the changing intermediary regime in India, as it exists in these structures, offers analytical insight into the structural orientation and constitutional location of India.

Although each jurisdiction has made some variation in their approach, it is possible to identify several general trends: the United States has traditionally been keen on broad platform immunity, the European Union has been more focused on implementing systematic regulatory accountability, and India seems to be pursuing a more balanced course of conditional immunity and constitutional protection.

A. The United States

The major section of the United States law that addresses intermediary liability is the 230 of the Communications Decency Act.[33] The online service provider is not to be considered the publisher or the speaker of information that is to be delivered by a different content provider as stated in Section 230(c) 1. This has been construed by courts to give wide immunity of third-party content to digital platforms.

In Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997), the Fourth Circuit Court of Appeals held that Section 230 of the Communications Decency Act precludes lawsuits seeking to treat online intermediaries as publishers of defamatory content posted by third-party users. The Court argued that the application of liability would provide incentives of censoring overboard and would not encourage the creation of interactive online service.

Subsequent cases like the Barrett v. Rosenthal,[34] once again stated that immunity applies widely to those online actors who republish third-party content. More recently, in Gonzalez v Google LLC,[35] the U.S. Supreme Court refused to limit the application of Section 230 substantially, therefore maintaining the status quo on immunity.[36]

[33] Communications Decency Act of 1996, 47 U.S.C. § 230 (United States).
[34] Barrett v. Rosenthal, 146 P.3d 510 (Cal. 2006).
[35] Gonzalez v. Google LLC, 598 U.S. 617 (2023).
[36] Orin S. Kerr, *The Case for the Third-Party Doctrine*, 107 Mich. L. Rev. 561 (2009).

The American regulatory philosophy puts into consideration innovation, a free market development, and a vigorous marketplace of ideas. It is not usually the statutory responsibility of platforms to spontaneously view or delete illegal content, but platforms are free to moderate in good faith without any loss of immunity. The model is indicative of a high First Amendment culture, in which the state regulation of speech is approached with suspicion. Nonetheless, writers express that expansive immunity can restrict responsibility on damaging internet behaviors.[37]

Therefore, the United States is one of the platforms of immunity models based on small intervention and wide protection of statutory liability of publishers.

B. European Union

The European Union on the other hand has increasingly established a more systematic accountability-based structure. The previous E-Commerce Directive gave conditional protections of safe harbour of other jurisdictions, where intermediaries were not liable to actual knowledge of illegal content and acted promptly once they had been warned of it.[38]

With time, the European regulatory model has however developed to include greater compliance directives. The GDPR established broad responsibilities in terms of processing data, transparency, user consent and accountability. The rights-based principle of the GDPR represents European self-determination with informational protection and privacy.

To a more recent date, the Digital Services Act (DSA) has put in place extensive due diligence obligations regarding online intermediaries, especially those of the category of Very Large Online Platforms (VLOP). Transparency reporting, assessment of risks in relation to systemic harms (misinformation and electoral interference), independent audit, and organized notice-and-action procedures are required by the DSA.[39]

[37] Olivier Sylvain, *Intermediary Design Duties*, 50 Conn. L. Rev. 203 (2018).
[38] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Electronic Commerce (E-Commerce Directive), 2000 O.J. (L 178) 1 (EU).
[39] Mark Tushnet, *Internet Exceptionalism: An Overview from a Constitutional Perspective*, 56 William & Mary L. Rev. 1631 (2015).

In contrast to the American model, the European one focuses on regulatory oversight, institutional control and the coordination of compliance standards among the member states. Safe harbour still exists, although it exists as a part of a larger compliance ecosystem.[40] European approach is a demonstration of a belief that digital markets need to be governed in a structured way so that the fundamental rights, democratic integrity and consumer welfare are safeguarded.[41]

C. Conditional Responsibility Model of India

The intermediary regime in India, mostly in accordance with the provisions of Section 79 of the Information Technology Act, 2000 and Intermediary Rules of 2021, seems to take a measured middle ground between the two regimes. Safe harbour protection is still in place, but it is conditional as far as due diligence is observed and government directions that are lawful are followed.

The Indian law does not afford blanket protection regardless of the adherence to regulations as in the case of the expansive immunity model of the United States.[42] Meanwhile, India has not enacted a strict or automatic liability culture of user-generated content. There is no general liability of the middlemen as publishers, but the liability arises when there is the breach of statutory terms and conditions or even the lawful instructions are not followed.

This conditional safe harbour model has been significantly shaped through judicial interpretation. In Shreya Singhal v. Union of India, the Supreme Court clarified that the "actual knowledge" requirement under Section 79 of the Information Technology Act must be understood as knowledge arising only through a court order or a notification by the appropriate government or its authorised agency. This interpretation was intended to prevent arbitrary takedown pressures based on private

[40] Molly Sauter, *The Coming Swarm: DDoS Actions, Hacktivism and Civil Disobedience on the Internet*, 9 Yale J.L. & Tech. 53 (2013).
[41] Nicolas Suzor, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 34 Berkeley Tech. L.J. 161 (2019).
[42] Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism*, 64 Oxford J. Legal Stud. 1 (2019).

complaints and to safeguard freedom of expression. By doing so, the Court strengthened constitutional balancing within the statutory framework.[43]

Recent regulatory changes as of 2021 have added increased compliance obligations, including redressal of grievances, transparency reporting, and limited traceability, but immunity under Section 79 remains subject to the compliance obligations. The Indian model thus incorporates responsibility and protection that is retained.

D. Observations

To start with, the United States favours speech maximalism and innovation by high immunity. Regulatory restraint is supported by the fear of exposing themselves to liability as a discouragement to online growth and promoting over-censorship.

Second, the European Union focuses on the rights-based accountability and systemic risk management.[44] Platforms are perceived as major digital actors that have an impact on society that should be subject to order.

Third, the Indian system has shown selective convergence to the two systems. It maintains conditional safe harbour (which is akin to the previous EU and U.S. schemes) and at the same time proposes differentiated compliance requirements of large platforms, just like the VLOP regime of the EU.[45] Nonetheless, in contrast with the supranational model of regulatory harmonisation at the EU level, the model in India is not yet fully rooted in the constitutional review and judiciary control.

The constitutional form of India provides another balancing level which is not inherent in purely statutory systems. Articles 32 and 226 are open to judicial review of enforcement actions in order to be proportional and to guarantee procedural fairness. Such constitutional accommodation is what makes the difference between India and purely regulatory forms of governance.

[43] Chinmayi Arun, *Online Hate Speech and Intermediary Responsibility in India*, 13 Indian J.L. & Tech. 1 (2021).
[44] Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism*, 64 Oxford J. Legal Stud. 1 (2019).
[45] Frank Pasquale, *Platform Neutrality: Enhancing Freedom of Expression in Spheres of Private Power*, 28 Theoretical Inquiries L. 487 (2017).

It can be thus argued that the intermediary regime of India can be described as a role model of constitutionalised conditional responsibility. It does not assume absolute immunity nor the strict liability. Rather, it appreciates that digital space is having a revolutionary impact on democratic discourse and economic living such that it deserves to be subject to structured responsibilities without dampening innovation.

The success of this middle way strategy will be based on the principles of its implementation, the clarity of executive instructions, and the ability to maintain the principles of proportionality over an extended period. When regulatory actions are implemented in a specific and procedurally just approach, the framework in India can be able to balance the course of expressive liberty and digital accountability.

Comparatively, the United States represents a broad platform immunity, and the European Union represents a regulated accountability whilst India seems to incorporate these philosophies in a constitutional balancing framework. The sustainability of this synthesis in the long term will be based on the continued judicial control, transparency in the institutions and the restrained regulation practice.

X. ANALYSIS: TOWARDS A HARMONIZED APPROACH

The development of intermediary liability in India indicates that there was a discernible shift in the type of model of intermediary liability as a passive facilitation model to a model of structured regulatory responsibility. In the Information Technology Act, 2000, the category of the intermediaries was initially envisaged as neutral conduits, which were allowed to enjoy conditional immunity of the publication of third-party content, assuming due diligence and no active involvement in the unlawful publication. The establishment of the 2021 Intermediary Rules is an important institutional change in that it establishes elaborate compliance arrangement, such as compulsory appointments, the redress of grievances, reporting, and cooperation procedures.

Notably, the protection of safe harbour is not eliminated by this development. Instead, it rebalances the terms of immunity maintenance. The change can thus be perceived as a transition of passive immunity to measured responsibility. It is not a regulatory philosophy to make intermediaries more like publishers in the traditional sense, but

given their systemic impact in the digital ecosystem, they should be given corresponding compliance responsibilities.[46]

Constitutional sustainability is, however, not only a matter of the textual design, but the mode of implementation. Expansion in regulation is not in itself constitutional invalidity. The final question is whether enforcing it is in line with proportionality, reasonableness, and procedural fairness as incorporated in Articles 19(1)(a) and 19(2) of the Constitution.[47] In Shreya Singhal v. Union of India, the Supreme Court made it clear that the obligation of intermediaries needed to be construed so as to avoid arbitrary censorship and safeguard legal expression. The Court made sure that intermediaries are not forced to play adjudicatory roles on speech by reading down "actual knowledge" to imply knowledge by way of court order or officially given governmental notice.

Equally, the privacy sensitive elements of the framework should be aligned with the provisions that are expressed in Justice K.S. Puttaswamy (Retd.) v. Union of India. Recognition of privacy as a fundamental right in Article 21 requires the traceability or data-related requirements to meet the legality, legitimate purpose, necessity, and proportionality. Constitutional validity, therefore, is not evaluated in an abstract manner but proportionately via enforcement and interpretation of rights sensitive to the enforcement.

The institutional design of the post-2021 framework is indicative of a layered system of governance as opposed to a single command-and-control regulatory model. The presence of compliance officers within the platforms, well-calibrated grievance redressal systems, executive directions which are issued within the framework of statutory power, and the presence of constitutional remedies in High Courts and the Supreme Court altogether forms a multi-level system of accountability. This decentralization of accountability minimizes the chances of arbitrary concentration of power within a specific institutional agent. More to the point, it entrenches digital governance in a larger rule-of-law framework by making sure that intermediary

[46] Malavika Raghavan, *Digital Governance and Free Expression in India*, 14 Indian J.L. & Tech. 77 (2022).
[47] Pavan Duggal, *Cyber Law and Intermediary Obligations in India*, 1 Sup. Ct. Cases (J.) 25 (2012).

obligations are also subject to transparency norms, procedural protection, and judicial oversight. In this regard, the development of intermediary liability in India is not only about expansion of regulation but also institutionalisation of the Constitution.[48]

The harmonised model can also be further strengthened by increased procedural transparency. Unambiguous definition of the types of content, rational instructions on takedown, publication of anonymised compliance rates and predictability of schedules decrease regulatory uncertainty both to users and intermediaries. Transparency promotes accountability not only in platforms but also in executive authorities issuing directions. This level of transparency helps to reduce the chances of defensive over-compliance, otherwise leading to over-removal of content and indirect chilling effects.

XI. RECOMMENDATIONS FOR STRENGTHENING CONSTITUTIONAL COMPLIANCE

Considering the above discussion, there are some reform-based amendments that can be made to enhance the constitutional soundness of the intermediary liability system. These are proposals based on the absence of law or institutional shortcomings but are rather presented as helpful improvements to the policy in order to enhance clarity, transparency, and institutional balance within a rapidly changing digital ecosystem.

The possible improvement is the issuance of more specific subordinate guidelines. Although the 2021 Rules give the overall compliance framework, the executive clarifications of the operational norms, including the content classification, minimal standards to invoke the traceability, and compliance reporting formats may mitigate the interpretative ambiguity. Fine tuning would help intermediaries to enforce obligations upon a regular basis and minimise the chances of unintentional over removal on account of indecision. Greater predictability through increased clarity does not change the statutory scheme underlying it.

[48] Mrinal Satish, *Reasonable Restrictions and Free Speech Jurisprudence in India*, 3 Indian J. Const. L. 45 (2009).

Adaptive governance may also be improved by a formal periodic review system. Digital technologies are rapidly developing, and regulatory frameworks have to be flexible to the latest trends of communication systems, artificial intelligence tool of moderation, and international data flows.[49] Recalibration where required would be possible through institutionalised review, which could be achieved in parliamentary committees, expert consultations or stakeholder engagement processes. Regular evaluation strengthens democratic legitimacy and makes sure that regulation requirements are commensurate to modern pressures.

Another such refinement is the transparent reporting requirements. Although major intermediaries already release reports on compliance, a deeper standardisation of the reports and more categories in disclosure could be beneficial in enhancing comparability and comprehension by the general population. Anonymised information on takedown requests, source of directions, median response times, and grievance appeal outcomes can be published to promote an educated popular discussion. Transparency enhances accountability of the two platforms, as well as of the regulatory players, which strengthens the trust of people in digital bureaucratic processes.

Procedural fairness could be reinforced further by strengthening the autonomy and usefulness of grievance redressal mechanisms.[50] Trust in institutional processes can be improved with the help of functional autonomy of grievance officers and appellate bodies, promoting rational decision-making, and having convenient user interfaces to allow complaints. Sound internal redressal limits the unwarranted litigation and maintains the constitutional remedies where they are justified.

Taken together, these refinements result in a dynamic as opposed to a static model of governance. The intermediary liability framework can still keep on changing with the changing times, in line with constitutional principles, technological realities, and democratic values by improving clarity, reviewability and transparency. These

[49] Abhinav Chandrachud, *Freedom of Speech and the Constitution of India: Judicial Trends*, 6 Indian J. Const. L. 85 (2013).
[50] Madhavi Goradia Divan, *Regulating Digital Speech: Constitutional Challenges*, 2 NLS Bus. L. Rev. 103 (2016)

measured intensifications of policy attest to the fact that neither the responsiveness nor the guardianship of regulations are mutually exclusive goals, but complementary pillars of the Indian digital constitutional regime.

XII. CONCLUSION

The case of intermediary liability in India has taken a course that indicates the general constitutional difficulty of regulating technological change in a rights system. Since the formation of the conditional safe harbour model in Section 79 of the Information Technology Act, 2000, to the development of the framework of the compliance architecture in the 2021 Intermediary Rules, the regulatory environment has mirrored the growing role of digital platforms in the society. This change does not mean the rejection of intermediary protection, nor the wild growth of regulation; it is, instead, a readjustment of responsibility in an ever-evolving digital ecosystem.

The 2021 model is characterized by the shift in passive facilitation to the responsibility that is regulated. The appointment of institutions, grievance redressal procedures, reporting requirements, and cooperation guidelines are manifestations of the acknowledgment that giant digital intermediaries have a tremendous power over the civic conversation, broadcasting information, and democratic engagement. Meanwhile, conditional safe harbour protection does not lose the principle over which intermediaries do not face any automatic responsibility when it comes to the contents of the third parties. The durability of the intermediary framework will ultimately depend not merely on statutory drafting, but on disciplined executive implementation and sustained judicial oversight grounded in proportionality and constitutional morality.

The eventual sustenance of the constitution is however based on proportional application. Court interpretation - especially in Shreya Singhal v. Union of India- has seen to it that the intermediary liability is not passed to personal censorship with no safeguard. Similarly, the fact that privacy has become a significant right in Justice K.S. Puttaswamy (Retd). v. Union of India emphasises that traceability and data related requirements should be legal, necessary and proportional. The ongoing litigation in different High Courts after 2021 further proves that the judiciary remains a balancing

institution: accepting the valid regulatory goals but strengthening the disciplinary regime of the procedure and protecting the rights.

Comparatively, the Indian approach lies between the vast immunity approach of the United States and the accountability regime of the European Union. India has chosen constitutionalised accountability instead of absolute immunity or strict liability by maintaining conditional immunity and giving compliance obligations. The fact that the judicial review remains available under Articles 32 and 226 provides the digital governance with a solid foundation in the rule of law tradition.

How well the executive implementation practices are clear, how well the practices of enforcement work to be transparent and periodic review mechanisms and well-developed grievance redressal structures will determine the future legitimacy of the intermediary regime in India. The regulatory model can enhance digital trust when it is used in a moderate effort and regulated by proportionality, without undermining the freedom of expression.

Altogether, the intermediary model of the post-2021 era is a constitutional way of adjusting to digital modernity. It confirms that, regulation and freedom of expression are not necessarily opposite to each other; instead, they may be able to exist in a mutually supportive framework in which accountability improves democracy participation, instead of weakening it. Maintaining this balance between courts, regulators, platforms and civil society is where the continuing work of courts, regulators, platforms and civil society lies to continue ensuring that the digital future of India is constitutionally sound, institutionally equal and normatively sound.

XIII. BIBLIOGRAPHY

A. Statutes & Subordinate Legislation

1. Constitution of India, arts. 19(1)(a), 19(2), 32 & 226.
2. Information Technology Act, 2000, No. 21 of 2000 (India).
3. Information Technology Act, 2000, § 2(w), § 79 (India).
4. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India, Feb. 25, 2021.

5. Communications Decency Act of 1996, 47 U.S.C. § 230 (United States).
6. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (E-Commerce Directive), 2000 O.J. (L 178) 1 (EU).

B. Case Laws

1. Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India).
2. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).
3. Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353 (India).
4. L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 (India).
5. Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997).
6. Barrett v. Rosenthal, 146 P.3d 510 (Cal. 2006).
7. Gonzalez v. Google LLC, 598 U.S. 617 (2023).

C. Journal Articles

1. Abhinav Chandrachud, *Freedom of Speech and the Constitution of India: Judicial Trends*, 6 Indian J. Const. L. 85 (2013).
2. Anupam Chander & Uyên P. Lê, *Free Speech and Innovation in the Digital Age*, 47 U.C. Davis L. Rev. 639 (2014).
3. Apar Gupta & Nikhil Pahwa, *Intermediary Liability in India: Chilling Effects of the Information Technology Rules*, 6 Indian J.L. & Tech. 1 (2010).
4. Arghya Sengupta, *Proportionality in Indian Constitutional Law*, 4 Indian J. Const. L. 1 (2011).
5. Chinmayi Arun, *Online Hate Speech and Intermediary Responsibility in India*, 13 Indian J.L. & Tech. 1 (2021).
6. Daphne Keller, *Who Do You Sue? State and Platform Hybrid Power over Online Speech*, 31 Harv. J.L. & Tech. 293 (2018).
7. Frank Pasquale, *Platform Neutrality: Enhancing Freedom of Expression in Spheres of Private Power*, 28 Theoretical Inquiries L. 487 (2017).

8. Gautam Bhatia, *The Supreme Court's Free Speech Jurisprudence in the Age of the Internet: A Study of Shreya Singhal v. Union of India*, 8 NUJS L. Rev. 1 (2015).

9. Justice B.N. Srikrishna, *Privacy and Informational Autonomy in India*, 10 NUJS L. Rev. 15 (2017).

10. Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism*, 64 Oxford J. Legal Stud. 1 (2019).

11. Malavika Raghavan, *Digital Governance and Free Expression in India*, 14 Indian J.L. & Tech. 77 (2022).

12. Mark Tushnet, *Internet Exceptionalism: An Overview from a Constitutional Perspective*, 56 William & Mary L. Rev. 1631 (2015).

13. Madhavi Goradia Divan, *Regulating Digital Speech: Constitutional Challenges*, 2 NLS Bus. L. Rev. 103 (2016).

14. Molly Sauter, *The Coming Swarm: DDoS Actions, Hacktivism and Civil Disobedience on the Internet*, 9 Yale J.L. & Tech. 53 (2013).

15. Mrinal Satish, *Reasonable Restrictions and Free Speech Jurisprudence in India*, 3 Indian J. Const. L. 45 (2009).

16. Nicolas Suzor, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 34 Berkeley Tech. L.J. 161 (2019).

17. Nikhil Pahwa, *Safe Harbour and the Future of Online Speech in India*, 52 Economic & Political Weekly 34 (2017).

18. Olivier Sylvain, *Intermediary Design Duties*, 50 Conn. L. Rev. 203 (2018).

19. Orin S. Kerr, *The Case for the Third-Party Doctrine*, 107 Mich. L. Rev. 561 (2009).

20. Pavan Duggal, *Cyber Law and Intermediary Obligations in India*, 1 Sup. Ct. Cases (J.) 25 (2012).

21. Pranesh Prakash, *Section 79 of the IT Act and the Intermediary Liability Regime in India*, 9 NUJS L. Rev. 45 (2016).

22. Rahul Matthan, *The Law of Intermediaries in India*, 2 Indian J.L. & Tech. 1 (2006).

23. Sahana Udupa & Nalin Mehta, *Platform Governance and Regulation in India*, 56 Economic & Political Weekly 34 (2021).

24. Shamnad Basheer, *Internet Intermediary Liability in India: The Need for Reform*, 4 Indian J.L. & Tech. 1 (2008).

25. Shreya Atrey, *Proportionality and the Indian Constitution: A Comparative Perspective*, 14 Int'l J. Const. L. 475 (2016).

26. Tarunabh Khaitan, *A Structured Doctrine of Proportionality in India*, 9 Oxford U. Commonwealth L.J. 19 (2009).

27. Vrinda Bhandari & Karan Lahiri, *The IT Rules, 2021 and the Future of Digital Free Speech in India*, 13 Indian J.L. & Tech. 45 (2021).

D. Website Sources

1. Ministry of Electronics and Information Technology (MeitY), Government of India, *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*, available at https://www.meity.gov.in (last visited Mar. 2026).

2. Supreme Court of India, *Judgment Information System (JUDIS)*, available at https://main.sci.gov.in (last visited Mar. 2026).