



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## REDEFINING RIGHTS TO MEET THE DEMANDS OF THE DIGITAL DEMOCRACY

*-by: Shubhransh Vir<sup>1</sup>*

### 1. INTRODUCTION:

In the modern era, **Digital rights are a pillar of a functional democracy**. In such a system, the close and connected nexus of technology, governance and individual liberty becomes the fuel for the essential policy discourse. This discourse gets much more urgent when it comes to the largest democracy of the world, it is influenced by **rapid digitalization**, the **need of safeguarding free speech, protecting privacy** and ensuring a high degree of **digital inclusivity** are challenging tasks. The delicate balance between the state interests and individual empowerment are of high importance, especially with the coming of the **DPDP Act<sup>2</sup>** and various content regulation norms. This article delves into the journey of **reshaping the contemplation of digital rights in India**. It analyses core aspects of the same like: Digital democracy, notion of evolving **free speech, privacy** and **accessibility of technologies**. It also makes a comparative analysis of the framework in the present European Union, the United States and attempts to uncover insights and avenues of reforms.

### 2. FREEDOM OF SPEECH IN INDIA'S DIGITAL DEMOCRACY:

The Indian digital sphere could be understood as a complex intersection of freedom of speech and concerns like misinformation, state regulatory practices, hate speech, and much more. Free expression, guaranteed by **Art. 19(1)(a)<sup>3</sup>** is complemented by a series of legal provisions which impose **reasonable restrictions**, safeguarding public order, decency, morality and serious concerns like national security.<sup>4</sup> But it needs to be understood that the balances sought are continuously tested by both govt policies and platform regulations.

---

<sup>1</sup> Final Year law student at UPES School of law, Dehradun; Specializing in Constitution law.

<sup>2</sup> Act No. 22 of 2023.

<sup>3</sup> India Const. art. 19, clause 1(a); All citizens shall have the right to freedom of speech and expression.

<sup>4</sup> Const. art. 19, clause 2.

## **2.1 THE LEGAL FRAMEWORK FOR FREE SPEECH:**

An important consideration needs to be made towards the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**.<sup>5</sup> It required online service providers to adopt mechanisms of content moderation to prevent the spread of unlawful content on their platforms. This is maintained by a conditional immunity framework for the platform which protects them from liability only if they ensure expedited removal of prohibited content upon getting a notice. While praising this approach, it has also been criticised for being ambiguous in regards to what constitutes incitement of violence and legitimate exercise of free speech. Various court rulings have also underlined that free speech should not be exercised at the cost of infringing other's rights.

## **2.2 CHALLENGES IN REGULATING ONLINE SPEECH:**

Some of the biggest challenges when it comes to the regulation of online free speech is the lack of definitive parameters related to the vague terms like “public order” and “national security”. This vagueness has the ability to curtail journalistic inquiry into matters of public importance and also curtail the dissent to popular mandates. Stakeholders have also expressed discontent due to unintended consequences arising out of **Section 44(3)**<sup>6</sup> of DPDP Act which has the ability to curtail transparency mechanisms of **RTI Act**.<sup>7</sup> This tension in the framework shows the need for **precise legislative language** which protects free speech without compromising the collective responsibility to avoid online harm.

## **2.3 BALANCING EXPRESSION AND RESPONSIBILITY:**

The role played by the corporate entities becomes very important when it comes to how the various stakeholders express the right or restraint on each other's free expression. They often try to accommodate the **community standard** while trying to maintain the **broader democratic ideals** of free speech. This inevitably takes us towards a more complicated issue of not only free but **responsible digital expression**. Thus, the dual challenge faced by the corporate entities makes it work in tandem with reformation of regulatory standards by the state and democratic ideals which the corporation upholds.

---

<sup>5</sup> Gazette of India, pt. II, sec. 3(i), Feb. 25, 2021.

<sup>6</sup> Digital Personal Data Protection Act, No. 22 of 2023, § 44, Amendments to Certain Acts.

<sup>7</sup> Act No. 22 of 2005.

### **3. PRIVACY IN THE DIGITAL AGE: THE CASE OF INDIA:**

Following the landmark verdict of **Justice KS Puttaswami v. Union of India**,<sup>8</sup> privacy has been recognized as a fundamental right under the Indian Constitution. Things like rapid digitalization and the need of safeguarding personal data has become imperative, prompting the legislature to work on new frameworks like that of Digital Personal Data Protection Act, introduced in August 2023.

#### **3.1 EVOLUTION OF DATA PROTECTION LEGISLATION:**

In its essence, the DPDP Act represents the Indian efforts in modernizing data protection regulations. It could be seen as a departure from the much more general Information Technology Act<sup>9</sup> of 2000. It defines various stakeholders like Data principle (whose data is being processed) and grants them special rights like access, correction and erasure of personal data. In other words, it could be understood as an Indian adoption of measures of the European GDPR.<sup>10</sup> However, the act still raises significant concerns regarding state exemptions and potential surveillance.

#### **3.2 STATE EXEMPTIONS AND SURVEILLANCE CONCERNS:**

The Digital Personal Data Protection Act, a first of its kind for India, was brought to alleviate public privacy concerns. However, a critical point of contention with the **DPDP Act** is the exemption granted to the state for its own activities as under **Section 17(2)(a)**,<sup>11</sup> that empowers the govt. to get an exemption under the banner of national security, public order, and foreign relations. Coupling this with **Section 44 of DPDP Act**, which potentially dilutes the public interest override as given under the **RTI Act**, poses significant risk of **surveillance** and lowering the **state accountability**. Thus, the ambiguity in language has a potential of shifting the control of data in the hands of the state. It could undermine the very essence of privacy in India.

#### **3.3 ADDRESSING DIGITAL HARMS:**

In addition to the concerns related to privacy which were already present in the traditional privacy discourse, the digital era introduces challenges like **Deepfakes, Unauthorized dissemination of intimate images, AI-generated content impersonating or targeting a specific community to induce hatred**. The lacunas of current legal framework are further accentuated due to a lack of

---

<sup>8</sup> (2017) 10 SCC 1.

<sup>9</sup> Act No. 21 of 2000.

<sup>10</sup> 2016 O.J. (L 119) 1.

<sup>11</sup> Digital Personal Data Protection Act, No. 22 of 2023, § 17, Exemptions.

clear and enforceable mechanism in relation to prompt redressal of digital harms. Thus, it needs to be understood that the DPDP Act is merely foundational in nature when it comes to data protection in India, there is a critical need to institute complementary laws and institutional measures that specifically address nascent domains of digital harassment and abuse.

#### **4. DIGITAL ACCESSIBILITY AND BRIDGING THE GAP:**

One of the most important aspects of modernity is the internet and the idea of accessibility of the same comes with it. Digital accessibility or accessibility to internet is considered to be a fundamental right in India,<sup>12</sup> it ensures access to digital technology despite any disability of the person.<sup>13</sup> The modern era has unfortunately increased the pre-existing accessibility concerns under legislations like Rights of Persons with Disabilities Act, 2016 and set forth a unique set of challenges.

##### **4.1 THE IMPORTANCE OF INCLUSIVE DIGITAL DESIGN:**

At the center of the discourse surrounding digital accessibility, lies the **Web Content Accessibility Guidelines<sup>14</sup> (WCGA)**, which is based on principles like: **Perceivability, Operability, Understandability, and Robustness**, also known as the POUR Principles. Ensuring them would ensure that every user, regardless of ability, can access the digital content. It caters to both, permanent disabilities and the people facing temporary disabilities.

##### **4.2 CURRENT LANDSCAPE IN INDIA:**

It must be understood that disabilities are a part of an emerging field, while India has made strides in physical accessibility in the past decade, the varying aspects of disability keeps on changing. WCGA standards ensure achieving globally recognized benchmarks for accessible digital space. However, due to lack of proper implementation of the same, by both private and public entities, they are yet to be fully integrated in the digital interface. Challenges like moving beyond compliances and creating a genuinely inclusive digital ecosystem which considers the diverse needs of the population are still pending.

##### **4.3 STRATEGIES FOR IMPROVED DIGITAL ACCESSIBILITY:**

In order for us to bridge the social divide, it is of high importance that we:

---

<sup>12</sup> Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

<sup>13</sup> Any type of disability which affects one's ability to access the internet, can have socio-economic character also.

<sup>14</sup> The Web Content Accessibility Guidelines (WCAG) ensure digital accessibility for individuals with disabilities, focusing on perceivable, operable, understandable, and robust content.

- Conduct **researches** based on the digital facilities one seeks to provide and ensure to include people with disabilities to capture **diverse datasets**.
- Ensure the **integration of accessibility guidelines** in various aspects of our digital projects.
- Promote **public awareness and collaboration** with various stakeholders like NGOs, Governmental bodies and various tech companies which are engaged in the process of making digital infrastructure of India.

These guidelines ensure accommodation of the best practices and not only improve the usability for the people with disabilities but also have a far-reaching impact in a much more inclusive digital economy benefitting all citizens equally.

## 5. COMPARATIVE ANALYSIS: INDIA, THE EUROPEAN UNION, AND THE UNITED STATES:

An examination of the digital rights in India using the comparative lens, and specifically focusing on the European Union and the US framework provides a very valuable insight into the challenges that we might face along with providing us with an opportunity to reform our own framework in due time.

### 5.1 FREEDOM OF SPEECH:

Aspect	India	European Union	United States
Legal Framework	IT Rules 2021; conditional immunity for online platforms.	Digital Services Act <sup>15</sup> , NetzDG <sup>16</sup> in Germany with principles of conditional liability.	Section 230 <sup>17</sup> of the CDA; and strong First Amendment constitutional protection.
Regulatory Approach	Focus is mainly on removal of harmful content, though the definitions used are ambiguous and leave a	A balanced approach between swift removal of illegal content balanced by judicial oversight.	A highly permissive environment, relying mainly on private standards for moderation of content.

<sup>15</sup> Digital Services Act, Regulation (EU) 2022/2065.

<sup>16</sup> Netzwerkdurchsetzungsgesetz (NetzDG), BGBl. I p. 3352.

<sup>17</sup> 47 U.S.C. § 230 (Section 230 of the Communications Decency Act of 1996): Protection for private blocking and screening of offensive material.

	scope of misuse.		
--	------------------	--	--

As discussed before, the Indian framework has a conditional immunity framework to combat harmful online content. However, the ambiguities in our framework do leave a scope of misuse by censorship and overreach. Contrastingly, the EU's approach is a demonstration of regulation focusing on rapid removal and penalties, mainly criticised for judicial oversight. The US system is mainly based on the legacy of the first amendment and showcases a permissive stance with private self-regulation.

## 5.2 PRIVACY PROTECTION:

Aspect	India	European Union	United States
Legislative Framework	Digital Personal Data Protection Act (DPDP Act) with certain exemptions for state actions.	GDPR with stringent rules on rights of data subject and cross-border transfers of personal data.	Largely governed by sectoral laws and not a comprehensive framework; emerging threats are dealt with by acts like Take It Down Act.
Data Subject Rights	Includes rights which ensure access, correction, and erasure of data; concerns over state surveillance are present.	Strong protection of sensitive personal data with strict transfer limitations and control over the same.	Focuses on protecting personal data, albeit inconsistently, with greater emphasis on free-market principles ensuring free expression.

Indian DPDP Act is foundational in nature and defines key terms, yet it leaves out the scope of state surveillance and excludes states which pose significant challenges. The GDPR of the European Union has stood as a global benchmark when it comes to global privacy laws. It has clear guidelines, robust protection of personal data, and provides additional safeguard to sensitive information. In contrast, US Framework is quite fragmented and largely sectoral due to the same

being based on the Market of Ideas notion. However, few sectoral laws deal with certain types of information sharing categorically.

### 5.3 DIGITAL ACCESSIBILITY:

Aspect	India	European Union	United States
Standards	While physical accessibility laws are more integrated, the integration of WCAG standards is increasing.	Has established standards (EN 301 549) <sup>18</sup> which is largely based on WCAG principles.	The title II of ADA <sup>19</sup> and Section 508 <sup>20</sup> mandates accessibility using the WCAG framework.
Implementation	Regulations have limited digital focus, and adoption remains gradual and uneven.	A Comprehensive regulatory approach with clear benchmarks for the accessibility compliance can be seen.	Well-defined legal mandates that ensure accessibility across public and private digital services can be seen.

As discussed in previous parts, India has made significant strides in the realm of existing legislative structures for physical accessibility but the digital domain still requires further development. For many platforms, the adoption of WCAG standards remains an aspirational objective. A more mature and enforceable framework can be seen in both the EU and the US; the EU through its technical standards (EN 301 549) and the US through its explicit legal mandates under the ADA and Section 508. These established frameworks offer potential models for India's path forward, and can be adapted and included in our framework to develop a more comprehensive system.

### 6. CHALLENGES AND OPPORTUNITIES IN REDEFINING DIGITAL RIGHTS:

As India continues to progress into the modern era, there is a need for her to evolve the digital rights framework she has. In this progression, several major challenges and opportunities present themselves, some of them are:

<sup>18</sup> EN 301 549 V3.2.1 (2021-03): Accessibility requirements for ICT products and services.

<sup>19</sup> 42 U.S.C. §§ 12131–12165 (1990), Nondiscrimination on the Basis of Disability in State and Local Government Services.

<sup>20</sup> 29 U.S.C. § 794d, Electronic and Information Technology Accessibility.

### **6.1 LEGAL PRECISION AND INSTITUTIONAL OVERSIGHT:**

As discussed in the previous parts of this article, one of the much-needed changes is regarding the legislative precision in regards to the definition of certain ambiguous terms. Ambiguous terms like “Public order”, “national security”, and “decency” demand a much clearer statutory definition to ensure that there is no misuse by state authorities. Strong institutional mechanisms like an **empowered Data Protection Board** having links with the judiciary would ensure a higher rate of timely, fair and accountable actions.

### **6.2 BALANCING CONFLICTING RIGHTS:**

Indian digital governance demands a delicate and flexible balance between the protection of individual privacy and upholding free expression. A clear **tension between RTI Act and DPDP Act**, showcasing the tussle between privacy and accountability, is an example of this challenge which shakes the core of democratic governance. Having **definite guidelines on when one right should yield to another is imperative** for a harmonious digital regulation.

### **6.3 ENHANCING DIGITAL LITERACY AND ACCESSIBILITY:**

India is still a developing economy and for her there are significant opportunities when it comes to integration of effective digital assets into national policy frameworks. This is also where her digital literacy becomes important, by investing into public awareness campaigns, stakeholder education, and technological innovation which adheres to the WCAG principles, India has a very high potential. This would require combined efforts from the Govt. agencies, private entities, and civil society organizations. By doing so we can ensure that accessibility is not just a compliance measure but also a fundamental attribute of India’s Digital Democracy.

### **6.4 COMPARATIVE LEARNING AND ADAPTATION:**

India can tailor its policy framework while learning from the best practices of the world, clear and robust frameworks as the ones present in USA and EU offer valuable insights into the same. A tailored approach which reflects Indian socio-economic realities while leveraging the proven strategies to enhance the ambit of data protection and making the regulations more effective would allow India to develop an effective framework. Furthermore, a channel of constant dialogue between policy advocates, government bodies, and digital rights advocates can allow a n adaptive reform which has the capability to evolve with technological advancement.

### **6.5 FOSTERING AN INCLUSIVE DIGITAL POLICY ENVIRONMENT:**

A successful redefinition of the digital rights framework in India would require a diverse stakeholder's perspective on such pressing issues. Getting inputs from marginalized communities, empowering digital literacy initiatives and by ensuring transparency in legislative accountability would be some of the most important steps for an effective policy which is both participatory and transparent. This way, India could develop a framework protecting the rights of individuals and reinforce the democratic ideals which underpin its rapidly evolving digital landscape.

## 7. CONCLUSION:

The process of redefining digital rights in India is a multifaceted challenge which deals with freedom of speech, privacy and digital accessibility. There is an urgent need for a transformative reconciliation due to the rapid advancement of India in regard to the competing demands of state security, individual privacy and free expression for all and balancing the same with citizen participation in the digital democracy. After a review of current framework and the comparative analysis with other jurisdictions of EU and the USA, some of the key insights which become relevant are:

- **Freedom of Speech:** Need for clearer definition to move beyond the limited protections available due to the conditional immunity and broad regulatory mandates. This would ensure accountability and prevent censorship.
- **Privacy:** While DPDP Act works towards a comprehensive framework in regard to data principles, it has exemptions and potential for misuse which calls for stronger safeguards and transparency to uphold privacy in digital democracy.
- **Accessibility:** While India is doing better on physical accessibility, dedicated standards for robust implementation of strategies in the digital realm are much needed. For this India can draw lessons from the relatively successful model of the USA and EU.

## MAIN FINDINGS:

- A **rapid evolution** can be seen in India's digital rights framework on the technological front, aided by legislative experimentation.
- There is a need for **constant oversight** in contentious areas like its requirement of **balance** between free speech and regulations on it.
- **Privacy protection**, while aided by the DPDP Act, has challenges related to state exemptions and surveillance concerns.

- **Digital accessibility** of India remains low compared to other matured frameworks of the EU and US, showcasing the need for inclusive design practice.
- **Adoption of best international practices** after a **comparative analysis** would provide aid to tackle the socio-political realities once they have been adequately molded to fit our realities and fit the balance of digital democracies.

It must be understood that redefining digital rights is more than mere legal reforms or policy changes, it's an embodiment of a transformative process requiring intricate cooperation between government, industries, and civil societies to create a truly robust system. Some severe challenges like ambiguous regulations, competing rights and need for inclusive design principles need to be addressed fully in order to create an inclusive digital ecosystem which is secure, transparent and accessible to all. It is a formidable task but holds the potential for a more empowering and cohesive digital democracy.

---