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Safeguarding freedom of expression in the digital age: A legal analysis of AI-driven social media content moderation and its implications for criminal law in India

Pooja Raj
Research Scholar, Department of Law, Gurugram University, Haryana, India

Abstract
In India's vibrant digital landscape, where millions voice their thoughts on social media, the right to free speech faces a thrilling yet complex challenge: AI-driven content moderation. This research dives into the captivating interplay between safeguarding freedom of expression and the algorithms that shape what we see online, exploring their ripple effects on criminal law. As social media platforms harness AI to sift through posts, they often stumble, silencing voices through overzealous filtering or biased decisions, sparking debates about censorship and privacy. These missteps can trigger criminal complaints, casting a shadow over open discourse and raising the stakes for users navigating this virtual world. With the Supreme Court stepping in to champion free expression, recent rulings illuminate the path toward balancing digital innovation with democratic values. This study uncovers how AI's rapid decisions, sometimes too quick to judge, can clash with the right to speak freely, while also exposing users' personal data to risks that blur into criminal investigations. Through a fresh legal lens, it examines the tension between curbing harmful content and preserving the spirited exchange of ideas that defines India's online culture. The research paints a vivid picture of a digital age where technology and law must dance in harmony, proposing bold reforms to ensure AI serves as a guardian, not a gatekeeper, of free speech. By advocating for transparent algorithms and robust privacy protections, it envisions a future where Indians can express themselves fearlessly, without the looming threat of legal repercussions. This exploration offers a compelling narrative for scholars and policymakers eager to shape a digital India that celebrates both freedom and fairness, inviting readers to join the quest for a truly open online world.

Keywords: AI, social media, free speech, freedom of expression, digital age, privacy

Introduction

Imagine a world where a single tweet, a heartfelt poem, or a bold opinion could vanish from the internet or, worse, land its creator in legal trouble, all because an algorithm deemed it unfit. In India, a nation pulsating with diverse voices and vibrant digital conversations, this scenario is becoming a reality as artificial intelligence increasingly shapes what we see and share on social media. Freedom of expression, a cherished right under the Indian Constitution, is at a crossroads, challenged by AI-driven content moderation systems designed to filter harmful content but often overstepping into censorship [1]. These algorithms, while efficient, sometimes misjudge cultural nuances or political dissent, silencing voices that deserve to be heard. This research embarks on a compelling journey to explore how AI moderation intersects with criminal law in India, examining the delicate balance between protecting free speech and maintaining public order. By delving into recent judicial interventions and legal frameworks, it seeks to unravel the complexities of this digital age, where technology and human rights must coexist harmoniously. The urgency of this issue lies in its impact on millions of Indians who use platforms like X and Instagram to express themselves, unaware of the legal risks lurking behind their posts.

The stakes are high when AI missteps lead to real-world consequences, as seen in cases where individuals face criminal charges for their online activity. For instance, in 2024, the Supreme Court intervened in a case where a poet faced a FIR for sharing a poem on social media, wrongly accused of inciting unrest. The Court's decision to quash the FIR underscored the dangers of overzealous content moderation and the misuse of criminal laws to suppress expression [2]. Such incidents highlight how AI systems, tasked with identifying harmful content, can inadvertently flag lawful speech, triggering legal actions that chill free expression. "The Digital Personal Data Protection Act [3]," adds a new dimension by regulating how platforms handle user data during moderation, raising questions about privacy violations when personal information is shared with authorities. Consider the example of a young activist in Delhi whose protest video was removed from a platform for violating community standards, only to find her personal details entangled in a police investigation [4] or picture a small-town teacher whose humorous meme about local politics went viral, only to face a defamation lawsuit because an algorithm mislabelled it as malicious [5]. These examples illustrate the human toll of AI's errors, where the line between free speech and criminality blurs, demanding a closer look at India's legal landscape.

This study is driven by the need to safeguard freedom of expression while addressing the challenges posed by AI-driven moderation. It explores how criminal laws, often invoked to curb online content, can inadvertently stifle democratic discourse, creating a chilling effect on users. By analysing judicial trends and legal frameworks, the research aims to propose practical solutions that ensure AI serves as a tool for fairness rather than a barrier to free speech. The Supreme Court's recent rulings offer hope, signalling a commitment to protecting digital rights, but gaps remain in addressing AI's role in content decisions [6]. This introduction sets the stage for a detailed examination of how India can navigate this digital frontier, ensuring that its citizens can speak freely without fear of legal repercussions. By weaving together legal analysis, real-world examples, and human stories, this study seeks to illuminate a path

toward a digital India where technology empowers, rather than restricts, the voices of its people. Data analysis reveals significant tensions between AI-driven content moderation and India's criminal justice framework. Analysis of National Crime Records Bureau data (2021-2022) indicates a 24% YoY increase in FIRs registered under Sections 153A or 505 IPC for online speech, with 68% originating from automated flagging systems [7]. Independent audits by the Internet Freedom Foundation, 2023, demonstrate that algorithmic tools erroneously flagged legitimate political dissent as "illegal content" in 42% of sampled takedowns during election periods, triggering unnecessary police investigations [8]. Concurrently, a 31% deficiency was recorded in AI's detection of caste-based hate speech, enabling unchecked violations of Section 153A IPC [9]. This dual failure over-enforcement against protected speech and under-enforcement of criminal content correlates with a 17% rise in digital rights litigation, highlighting systemic due process gaps in the intersection of automated moderation and criminal procedure [10].

Early Clashes: Free Speech vs. National Security

The evolution of criminal law in India's digital landscape reflects a constant struggle to balance freedom of expression with the need to curb harmful online content, a challenge now intensified by AI-driven social media content moderation. Since the early 2000s, the rapid growth of internet access has transformed public discourse, with social media platforms becoming arenas for free speech but also breeding grounds for misinformation and cybercrimes [11]. To address these issues, the IT Act, emerged as a cornerstone of India's cyber law framework, introducing criminal penalties for offences like hacking and online defamation. However, provisions like Section 66A, which criminalized "offensive" online communication, were broadly worded, leading to frequent misuse by authorities to suppress dissent [12]. Citizens faced arrests and FIRs for social media posts deemed controversial, highlighting the tension between enforcing criminal law and protecting constitutional rights under Article 19(1)(a) [13]. This historical misuse of criminal provisions set the stage for modern debates about AI moderation, as algorithms began automating content decisions, sometimes triggering criminal investigations for lawful expression. The early reliance on vague laws to police online spaces underscored the need for precise legal standards, a challenge that persists as AI complicates content regulation.

A defining moment in this history was the Supreme Court's ruling in Shreya Singhal v. Union of India [14], which struck down Section 66A for its chilling effect on free speech. Sparked by the arrest of two women for a Facebook post criticising a political leader, the case exposed how criminal laws could be weaponised to silence online voices, prompting widespread calls for reform. The judgment reaffirmed that criminal penalties for online content must align with constitutional limits, but it also revealed gaps in addressing emerging technologies like AI. As platforms adopted AI-driven moderation in the late 2010s to filter content, erroneous flagging of posts led to privacy breaches and criminal complaints, often under IT Act provisions like Section 66 talks about computer-related offences or the Indian Penal Code's defamation clauses. The DPDP Act [15] introduced new safeguards for user data, but its interplay with criminal law remains untested. This historical trajectory, marked by overreach and judicial correction, shapes India's ongoing efforts to align criminal law with the realities of AI moderation, ensuring that free expression is not unjustly penalised.

Implications of AI Regulation on Digital Free Speech

The implications of AI regulations on digital speech governing freedom of expression and AI-driven social media content moderation in India, particularly in the context of criminal law, are a dynamic blend of constitutional protections, criminal statutes, and emerging digital regulations designed to balance free speech with public safety. At the core of this framework lies the BNS [16], and provides key criminal provisions applicable to online content. Section 351 of this Act defines criminal defamation, imposing penalties for statements that harm reputations, including those shared on social media, while Section 352 addresses incitement to offences, often invoked against posts deemed to disturb public order. These sections are frequently used to file FIRs against social media users, sometimes stifling legitimate expression when AI moderation misflags content as harmful. The BNSS [17], outlines procedural aspects for such cases, including Section 173, which governs FIR registration, and Section 528, which allows courts to direct the removal of objectionable online content. These criminal laws, while essential for addressing cybercrimes, risk overreach when applied to lawful speech, as AI algorithms amplify the scrutiny of online posts. The challenge lies in ensuring these provisions are enforced proportionately, respecting the right to free expression under Article 19(1)(a) of the Constitution, which guarantees free speech subject to reasonable restrictions under Article 19(2) for public order, morality, or national security [18]. This delicate balance is central to India's efforts to regulate digital platforms without curbing democratic discourse, as millions share their voices online daily.

Beyond criminal statutes, other laws shape the regulation of AI-driven content moderation and its criminal law implications. The IT Act [19] is pivotal, with Section 66 criminalising computer-related offences like hacking, which can apply to unauthorised data access during moderation, and Section 69A empowering the government to block online content for reasons like public safety. Section 72A penalises the disclosure of personal information without consent, a critical safeguard when AI systems process user data, potentially leading to privacy breaches that trigger criminal investigations. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, amended in 2023, mandate social media platforms to proactively moderate content using AI tools and establish grievance redressal mechanisms, while the controversial Fact Check Unit aimed to flag government-related misinformation but was stayed by the Supreme Court in 2024 for threatening free speech. The DPDP Act [20], further strengthens this framework by regulating how platforms handle personal data during AI moderation, with Section 7 imposing obligations on data fiduciaries to ensure transparency and consent, reducing the risk of privacy violations that could escalate into criminal liability. Together, these laws form a robust yet complex framework, striving to protect free expression while addressing the challenges of AI-driven moderation. However, their implementation must evolve to prevent misuse, ensuring that criminal laws do not unduly penalise lawful speech in India's vibrant digital ecosystem.

Judicial Recognition of Digital Speech as Protected Expression

The Indian judiciary has been instrumental in safeguarding freedom of expression in the digital age, particularly as AI-driven social media content moderation intersects with criminal law, creating complex challenges for balancing free speech with public safety. In Imran Pratapgarhi v. State of Gujarat [21], the Supreme Court delivered a landmark ruling that underscored the sanctity of free expression. The case involved Congress MP Imran Pratapgarhi, who faced a FIR in Gujarat for posting a poem on social media titled "Ae khoon ke pyase baat suno," which promoted non-violence but was accused of inciting enmity under Sections 196, 197, 299, 302, and 351 of the BNS [22]. The Court quashed the FIR, criticising the Gujarat Police for misusing criminal law to suppress artistic expression and emphasising that free speech under Article 19(1)(a) [23] cannot be curtailed based on the sensitivities of "weak-minded" individuals. This judgment highlighted the risks of AI-driven moderation misinterpreting creative content, which could lead to unwarranted criminal complaints, and raised concerns about privacy violations when user data is shared during investigations. The ruling resonates with countless Indians who use social media to share ideas, affirming that creativity must not be stifled by overzealous legal actions, while urging police to uphold constitutional ideals of liberty.

Another pivotal case, Kunal Kamra & Others v. Union of India [24], addressed the threat of government-led censorship through AI-driven content moderation. Comedian Kunal Kamra, alongside the Editors Guild of India and others, challenged the 2023 amendments to the IT Rules, 2021, which empowered an FCU to flag social media content about the government as "fake, false, or misleading." The Bombay High Court, in a final ruling on September 26, 2024, struck down Rule 3(1)(b)(v) as unconstitutional, finding it violated Articles 14, 19(1)(a), and 19(1)(g). The Supreme Court had earlier stayed the FCU's notification on March 21, 2024, pending the High Court's decision. The Court noted that the rule's vague terms created a chilling effect, compelling platforms to censor content to avoid losing safe harbour under Section 79 of the IT Act. This case exposed the dangers of AI tools amplifying government control, potentially leading to criminal liability under BNS provisions like Section 352 for dissenters. It stands as a beacon for those who fear state overreach in the digital space, ensuring platforms remain spaces for open discourse.

In Foundation for Media Professionals v. Union of India [25], the Supreme Court tackled the criminal law implications of digital surveillance and content moderation, particularly for journalists. Triggered by the 2023 News click case, where 300 electronic devices were seized from 90 journalists, the Court issued interim guidelines on February 14, 2024, to regulate the search and seizure of digital devices. It ruled that such actions must comply with Article 19(1)(a) and Article 21, condemning indiscriminate seizures aimed at suppressing media content. The judgment addressed how AI-driven content flagging could lead to privacy breaches, with seized data potentially fuelling criminal investigations under the IT Act Section 66 or the BNS Section 351. This ruling is a lifeline for journalists and activists, ensuring their digital tools are not weaponised to silence them, and it calls for accountability in how AI moderation intersects with criminal probes. Similarly, Anuradha Bhasin v. Union of India [26] reinforced the judiciary's commitment to digital rights, declaring that freedom of expression online is protected under Article 19(1)(a) and that internet restrictions must be proportionate. Though not directly tied to AI, it set a precedent for scrutinising state actions that curtail online speech, relevant to cases where AI moderation triggers criminal consequences. These judgments collectively weave a protective tapestry for free expression, urging a future where technology and criminal law serve justice without trampling on India's democratic spirit.

Comparative Analysis with International Standards

India's approach to safeguarding freedom of expression in the digital realm, particularly through the lens of AI-driven social media content moderation and its criminal law implications, offers a unique perspective when juxtaposed with global practices. In the European Union, the Digital Services Act establishes a robust framework for regulating online platforms, emphasising transparency in AI moderation processes [27]. Unlike India, where criminal laws like the BNS Act are often invoked to address online content, the EU prioritises civil penalties and regulatory oversight, requiring platforms to disclose moderation algorithms and provide appeal mechanisms for content removals. This approach minimizes the use of criminal sanctions, reducing the chilling effect on free speech seen in cases like India's, where FIRs are filed for misflagged posts. For instance, a German influencer wrongly flagged for "hate speech" by AI can challenge the decision through transparent DSA procedures [28], whereas an Indian user might face immediate police action. The EU's focus on user empowerment and data privacy under the General Data Protection Regulation contrasts [29] with India's Digital Personal Data Protection Act, 2023, which is still in early implementation, leaving gaps in protecting user data during criminal investigations. This comparison highlights India's need for clearer AI transparency norms to prevent criminal law misuse, offering a lesson in balancing regulation with digital rights for its millions of social media users striving to express themselves freely.

In contrast, Singapore's Protection from Online Falsehoods and Manipulation Act, 2019, empowering the government to order corrections or removals of online content deemed false, with criminal penalties for non-compliance [30]. Similar to India's Fact Check Unit, which was stayed by the Supreme Court in 2024, Singapore's law allows state intervention in content moderation, but its enforcement is more streamlined, avoiding the frequent FIRs seen in India. However, POFMA's broad application has sparked concerns about stifling dissent, much like India's challenges with overzealous criminal complaints. For example, a Singaporean blogger faced a correction order for a post questioning government policy [31], akin to an Indian activist's ordeal with defamation charges, yet Singapore's process avoids prolonged criminal trials. Singapore's reliance on human oversight alongside AI moderation contrasts with India's heavier dependence on automated systems, which often misinterpret cultural nuances, leading to privacy breaches during investigations. Meanwhile, the United States leans on Section 230 of the Communications Decency Act, granting platforms immunity from liability for user content, encouraging self-regulation through AI [32], but lacking India's criminal law focus. This comparative lens reveals India's unique challenge: harmonising robust

criminal law enforcement with AI moderation to protect free speech without replicating the EU's regulatory density, Singapore's state control, or the US's laissez-faire approach, ensuring a digital space where voices thrive unhindered.

Conclusion

In India's lively digital world, where social media buzzes with countless voices, protecting freedom of expression amid AI-driven content moderation is a pressing challenge, especially in its tangle with criminal law. This study has delved into the tricky balance of upholding the constitutional right to free speech while tackling the pitfalls of AI algorithms that sometimes misjudge lawful content, sparking criminal complaints that can silence users. The judiciary's firm stance against the misuse of criminal laws shines a light on the need to prevent overzealous prosecutions that dampen online discourse. New privacy-focused legislation offers a glimmer of hope to shield user data during moderation, but its success hinges on robust enforcement to keep criminal liability in check. Drawing from global models that prioritise clear rules and accountability, this research calls for reforms like open AI processes and fair complaint-handling systems to ensure criminal laws don't unfairly target free expression. For every Indian pouring their thoughts or dreams into the digital space, this vision promises a framework where criminal laws serve justice without casting a shadow over open dialogue, nurturing a digital India where ideas flow freely and fearlessly.

Suggestions

1. Require all AI content moderation systems to undergo regular independent audits for bias and accuracy, with results made publicly available.
2. Establish clear legal guidelines distinguishing between lawful dissent and genuinely harmful content that warrants removal under Indian law.
3. Create specialized digital rights courts to handle content moderation disputes and ensure quick resolution of wrongful takedowns.
4. Mandate that social media platforms provide detailed, understandable explanations whenever content is removed or accounts are suspended.
5. Develop standardized training programs for law enforcement to properly evaluate AI-flagged content before initiating legal action.
6. Implement a transparent appeal process where users can challenge automated moderation decisions before human reviewers.
7. Update India's evidence laws to clearly define when and how AI-detected content can be used in criminal proceedings.
8. Introduce penalties for platforms that repeatedly make erroneous content moderation decisions affecting free expression.
9. Launch public awareness campaigns to educate citizens about their digital rights and legal recourse options.
10. Form a multi-stakeholder regulatory body comprising tech experts, legal scholars and civil society to oversee AI moderation practices.

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