

Freedom of Expression vs. Accountability: Legal Challenges in Governing Social Media Content in India

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Abstract: The exponential growth of internet access and social media usage in India has redefined the boundaries of communication and civil discourse. As of March 2024, India boasts over 954 million internet users, including over 398 million rural users, reflecting a significant democratization of information access. However, this rise in digital engagement has also intensified the misuse of online platforms, including the spread of misinformation, hate speech, cyber defamation, and the erosion of privacy.

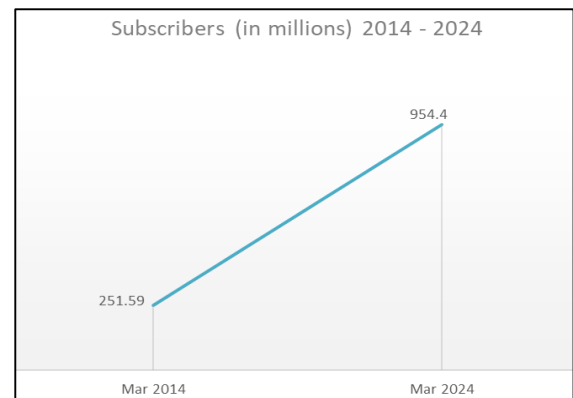
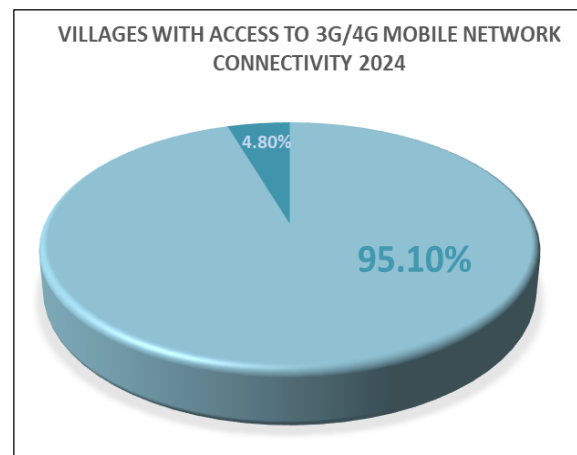
This paper articulates the legal contention between the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution and the need for accountability in the social media space, especially in light of the reasonable restrictions outlined in Article 19(2). It critically examines the existing regulatory framework, including the Information Technology Act, 2000, the Indian Penal Code, and the 2021 amendments to the Intermediary Guidelines.

Through case studies such as the Madhya Pradesh High Court's ban on editing livestreams and the defamation case involving YouTuber Dhruv Rathee the paper highlights how courts and legal institutions are grappling with the digital age's unique challenges. By drawing comparisons with global models like the UAE's influencer licensing regime and the European Union's Digital Services Act, the paper advocates for a more robust, transparent, and constitutionally sound regulatory approach in India. It concludes with recommendations aimed at striking a fair balance between digital freedom and responsible online behavior.

Keywords-Social Media, Digital Freedom.

I. INTRODUCTION

The internet has transformed global communication, with over 5.65 billion people 68.7% of the world's population, connected as of July 2025. In India, this digital revolution has been particularly rapid and expansive. Between March 2014 and March 2024, internet subscribers in India surged from 251.59 million to 954.40 million, reflecting a compound annual growth rate (CAGR) of 14.26%. Notably, 398.35 million of these users now reside in rural areas, and 95.15% of India's 644,131 villages have access to 3G/4G mobile connectivity. This infrastructure has successfully bridged the urban & rural digital divide, enabling mass access to social media platforms. However, the explosive growth of online communication presents a significant legal and regulatory dilemma.



While the Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a), this right is subject to reasonable restrictions under Article 19(2) in the interests of sovereignty, public order, morality, and security. The unregulated proliferation of content on platforms such as Facebook, Instagram, YouTube, and X (formerly Twitter) has led to growing instances of hate speech, misinformation, cyberbullying, and data privacy violations, challenging the limits of permissible expression. This paper explores the legal tension between freedom of expression and the need for accountability in India's digital space. It critically analyzes current Indian laws, including the Information Technology Act, 2000, intermediary liability rules, recent Supreme Court judgments, and regulatory gaps. It also examines international frameworks such as the UAE's e-media licensing model,

Singapore’s Media Development Authority (MDA) framework, Germany’s Network Enforcement Act (NetzDG), UK’s The Online Safety Act 2023, and the EU Digital Services Act to offer comparative insights. The paper argues for a balanced regulatory framework that upholds democratic freedoms while ensuring content responsibility, platform accountability, and user protection, particularly in light of the social harms emerging from unmonitored digital influence. It concludes with policy recommendations for a transparent, constitutionally sound, and technologically adaptable approach to social media governance in India.

II. LITERATURE REVIEW

A. Constitutional and Jurisprudential Sources

M.P. Jain, *Indian Constitutional Law*: Offers a detailed understanding of Article 19(1)(a) and the reasonable restrictions clause.

Durga Das Basu, *Commentary on the Constitution of India*: Discusses the evolution of free speech and judicial interpretations post-independence.

B. Social Media and Digital Regulation

Usha Ramanathan, “Data and the Constitution in the Digital Age” (*Economic & Political Weekly*): Discusses the challenge of data protection and surveillance in the context of freedom of expression.

Vivek Sood, “Cyber Law Simplified”: Outlines legal duties and liabilities under the IT Act for intermediaries and content creators.

Pranesh Prakash (Centre for Internet & Society), writings on intermediary liability: Focus on safe harbor protections and the challenges of content regulation in India.

C. Key Judicial Decisions

Shreya Singhal v. Union of India: A landmark case striking down Section 66A IT Act; sets the tone for free speech protection online.

Ajmal Amir Kasab Case: Deals with hate speech and national security-related restrictions on speech.

Re:Ramlila Maidan Incident (2012) SC Judgment: Emphasizes proportionality and procedural safeguards in state restrictions on expression.

D. Reports and Policy Documents

Law Commission of India Report No. 267 – Hate Speech: Recommends distinguishing hate speech from free speech and calls for clearer statutory definitions.

MeitY Guidelines (2021): Focuses on intermediary accountability and grievance redressal mechanisms.

E. Global Comparisons

European Union Digital Services Act (2022): Offers a rights-respecting model for intermediary regulation and user protection.

UAE’s National Media Council Licensing Rules: Introduces mandatory influencer licensing, a contrast to India’s unregulated ecosystem.

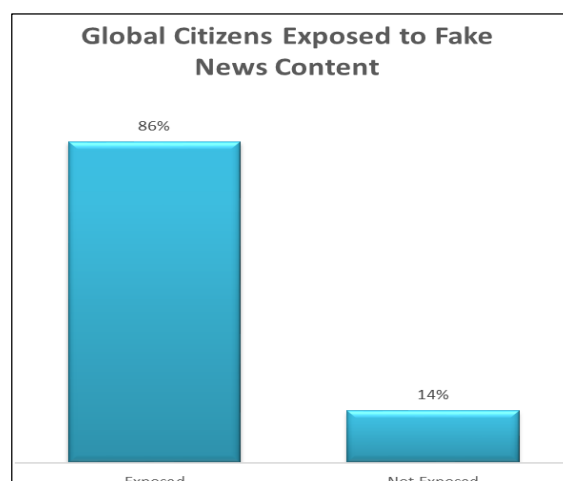
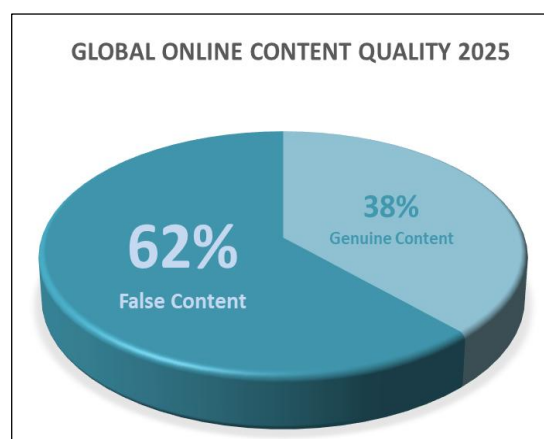
III. THE MISINFORMATION CRISIS – INDIA’S BATTLE AGAINST DIGITAL DECEPTION

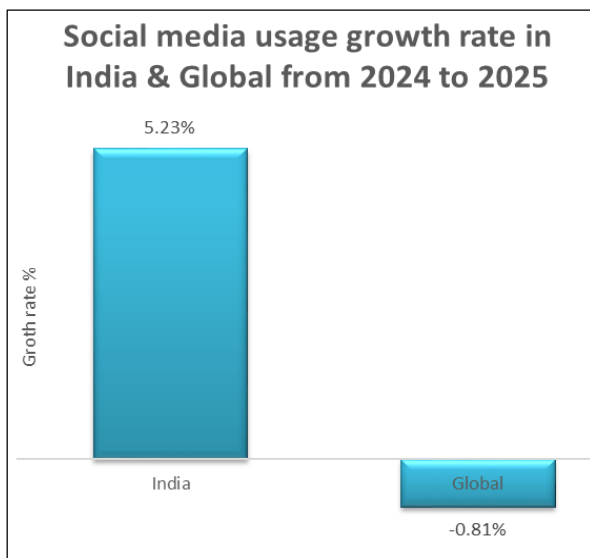
In 2025, fake news continues to pollute the internet at an alarming scale, with 62% of online content now deemed false and 86% of global citizens having been exposed to misinformation. The spread of fake news has indeed become more infectious than any virus, undermining social cohesion and democratic discourse.

According to the World Economic Forum's 2024 Global Risk Report, India was ranked highest for the risk of misinformation and disinformation, highlighting the severity of the challenge facing the country. The government's response has been multifaceted, with increasing enforcement actions against digital deception.

While comprehensive 2025 parliamentary data isn't yet available, by 2022, states like Telangana recorded approximately 81 fake news cases, showing the persistent nature of this problem. India witnessed a 214% rise in fake news cases during the pandemic year of 2019, indicating how crises can accelerate misinformation spread.

The scale of India's digital landscape has grown dramatically. As of 2025, WhatsApp leads with 531.46 million active users in India, followed by Instagram with 516.92 million users, and Facebook with 492.70 million users. The number of internet users in India has increased by 49 million (+6.5 percent) between January 2024 and January 2025, while India now has 862 million social media users, second only to China globally.





Social media usage in India increased by 5.23% from 2024 to early 2025, even as global social media usage decreased by 0.81% during the same period. This explosive growth amplifies both opportunities and risks.

In regions like Jammu & Kashmir, where internet restrictions were once common, communication infrastructure is being strengthened through optical fiber networks. This development is crucial not only for Kashmir's economic progress but also from a strategic security perspective.

A 2023 survey revealed that 43% of Indian respondents identified fake news by observing how information spreads and checking its absence from other digital platforms, showing growing digital literacy awareness among users.

The challenge is clear: the misuse of social media under the constitutional right to freedom of speech and expression is paradoxically becoming a threat to that very freedom. Without robust legal frameworks specifically addressing social media regulation, anti-social elements, anti-national forces, and malicious users pose a fatal danger to both India's Constitution and its innocent citizens. The explosive growth in digital connectivity, while democratizing access to information has also democratized the tools of deception, making comprehensive digital governance not just desirable but essential for preserving democratic discourse in the digital age.

IV. FREEDOM OF SPEECH & EXPRESSION – MEANING AND LEGAL FRAMEWORK

John Milton said that “give me the liberty to know, to argue freely, and to utter according to conscience, above all liberties”. The above quote by John Milton clearly depicts the gist of freedom of speech. He argued that without human freedom there would be no growth and development in science, law, and social, economic, political or in any other field.

Meaning of Freedom of Speech & Expression: Freedom of speech and expression includes and inducts the expression of one's ideas through visible representations such as gestures, signs, and other means of the communicable medium

whatever it print media, electronic media or social media. It also inducts the right to propagate or circulate one's views or ideas through all types of media or through any other traditional communication channels. The rise of social media has created an unprecedented paradox for freedom of expression. While these platforms have democratized communication giving voice to marginalized communities and enabling global conversations, they have also introduced complex challenges that traditional free speech frameworks struggle to address.

V. LEGAL PROVISIONS AND CASE STUDIES IN INDIA

Laws related to Freedom of Speech & Expression in India: Information Technology Act 2000 and Indian Penal Code 1860

A. *Madhya Pradesh High Court Banned the Live Streaming of Court Hearing:*

In its interim order, the division bench of Chief Justice Suresh Kumar Kait and Justice has banned the live streaming of Court hearings from being edited and uploaded on social media. A bench of Chief Justice Suresh Kumar Kaith and Justice Vivek Jain has issued notices to the Central and State Governments, the Ministry of Information & Broadcasting, and various social media platforms, Meta Platform, YouTube, X and others and directed them to submit their replies in this regard. In the petition filed by Damoh resident social activist Dr. Vijay Bajaj, it was said that some rules were made for live streaming of judicial proceedings in Madhya Pradesh High Court. There's a clear provision in these rules that all imprints of live streaming are with the High Court. Under these rules, arbitrary use, participating in restatement or uploading of live streaming on any platform is banned.

Despite this, in violation of the prescribed rules, live streaming clippings are being edited and uploaded on many internet media platforms to gain economic benefits. Memes and shorts of the orders of the High Court are made and indecent and objectionable comments are made on judges, advocates and government officials. Relief was sought in the petition that the money earned by the internet media by misusing the High Court live streaming should be recovered. Apart from this, the clippings uploaded on social media should be deleted. The division bench has issued the above orders after hearing the petition. Advocate Mukesh Kumar Agarwal and Advocate Utkarsh Agarwal had pleaded on behalf of the petitioner.

B. *Section 499*

Section 499 of the Indian Panel Code (IPC) will apply to defamation through social media platforms including Facebook, which will come under the cyber defamation title, because under Section 499 of the IPC, it is provided that whoever makes or publishes any imputation about a person by words spoken or intended to be read or by signs or visual delineations with the end of causing detriment or knowing or having reason to believe that similar insinuation will harm the character of that person.

The freedom of speech & expression is being misused by anti-social and anti-nation forces in India under the cover of right to freedom of speech & expression in social media platforms & controversial comments and controversial commentary among the millions. One such example is a case of Dhruv Rathee. Freedom of speech does not mean that you

can say whatever comes to your mind and attack one's privacy, spread unrest, damage the unity & peace of India, violate the Constitution of India and judiciary.

C. Dhruv Rathee's troubles increased: Delhi court sent summons to YouTuber

Cross the Line of Freedom of Speech & Expression: Free speech in India has sunk into a perilous abyss and steadily falling Press freedom indices underscore the dangers of crossing a line that is becoming increasingly contentious as it is said in other report of judiciary. Delhi's Saket Court issued summons to Dhruv Rathee in a defamation case filed by BJP leader Suresh Nakhua against YouTuber Dhruv Rath. The court issued summons to YouTuber Dhruv Rathee in a defamation case filed by Bharatiya Janata Party (BJP) leader Suresh Karamshi Nakhua after Rathee allegedly called him a "violent and abusive" troll.

D. IT Act 2000

IT Act 2000 - Social media in India is primarily governed by the Information Technology Act, 2000, and its subsequent amendments. Key provisions include Sections 69A, which allows the government to block content, and Section 79, which provides safe harbor protection to intermediaries (social media platforms) for third-party content. The Act also addresses cybercrimes, online obscenity, and data privacy. Recent amendments, particularly the 2021 changes to intermediary liability, have increased the responsibility of social media platforms for content moderation.

In 2015, the Supreme Court of India declared that Section 66A of the Information Technology Act (IT Act) is unconstitutional, and it does not give any arbitrary right to arrest anyone. If we look at the context of Kerala, 118D has been repealed before 118A. But recently, while hearing a case, the Supreme Court of India had also said that the thing that has been misused the most in recent times is freedom of expression. The Supreme Court of India even told the Central Government of India that there is a dire need for guidelines regarding social media so that those who give misleading information can be identified and action can be taken against them. The court expressed concern that the situation is such that even our privacy is not safe, freedom of expression should not be used to sow the seeds of hatred.

Freedom of Speech Considerations: Freedom of speech is a fundamental right, but not absolute. Governments and social media platforms must balance free expression with the need to regulate harmful content. The challenge lies in distinguishing between legitimate political speech and harmful or hateful social media content. In India, the correlation between social media, politics, and free speech is dramatically complex. The country has a diverse population, vibrant democracy, and rapidly evolving online landscape create challenges for regulating online or social media content.

VI. HYPOTHESIS OF THE STUDY

- (a) There is being misused of the right of freedom of speech & expression in India in social media platforms.
- (b) Freedom of speech & expression does not mean that we can violate the Constitution, control judiciary, and attack on one's privacy and spread unrest, damage the unity & peace of the country.
- (c) Restrictions on freedom of speech & expression are eventually necessary to control the anti-social, anti-nation

powers and maintain law & order for the security of the nation, constitution and peace and unity.

Further we will see how these some of these regulations are enforced in various countries across the Worldare balancing Freedom of expression Vs. Accountability.

VII. GLOBAL SOCIAL MEDIA REGULATIONS – A CONTEMPORARY ANALYSIS

The regulatory framework governing social media platforms is undergoing a profound transformation, characterized by diverse national approaches that reflect unique cultural values, legal traditions, and political imperatives. In this dynamic environment, the European Union has emerged as a frontrunner in comprehensive digital governance with the full applicability of its Digital Services Act (DSA) in February 2024. This landmark legislation has fundamentally reshaped the operational landscape for social media platforms across the EU, establishing a risk-based regulatory paradigm that, in certain aspects, supersedes existing national laws, including Germany's Network Enforcement Act (NetzDG). This paper will analyze the distinct regulatory models adopted by key jurisdictions—the European Union, Germany, Russia, and Singapore—to illuminate the philosophical and practical challenges inherent in governing social media content globally.

UAE

The UAE has developed one of the most structured licensing frameworks for social media activities globally, implementing a dual-license system that became fully operational in 2024. The new law from the Abu Dhabi Department of Economic Development (ADDED) stipulates that social media influencers in Abu Dhabi require a license to do business, marking a significant shift in how the country regulates digital media activities.

Since 2024, the Abu Dhabi Department of Economic Development (ADDED) has mandated that influencers promoting any product or service through their social media platforms must hold a trade license. Failure to comply could lead to fines of up to Dh10,000.

European Union

The Digital Services Act (DSA) stands as arguably the most sophisticated global approach to social media regulation. It mandates that platforms with over 45 million users undertake annual risk assessments to identify potential harms related to illegal content, fundamental rights infringements, and broader societal impacts. These platforms are further required to provide extensive reporting on their content moderation decisions, the functioning of their recommendation algorithms, and their data handling practices. Compliance with safety obligations is verified through independent audits. The DSA also introduces enhanced monitoring protocols during critical periods such as emergencies, elections, or public health crises. Furthermore, it empowers users with rights to receive explanations for automated content decisions, access straightforward complaint mechanisms, and pursue appeals processes. The European Commission is vested with significant enforcement powers, including the ability to impose fines up to 6% of a platform's global annual turnover and, in cases of repeated

violations, even suspend services, thereby exercising direct oversight over Very Large Online Platforms (VLOPs).

Despite its comprehensive nature, the DSA's approach is not without its critics and potential drawbacks. A significant concern is the tendency for platforms to engage in "over-compliance," leading to the removal of lawful content in an effort to avoid penalties. This phenomenon can result in excessive censorship and stifle legitimate discourse. The substantial regulatory burden imposed by the DSA may also deter new platforms and startups from entering the European market, potentially entrenching the dominance of existing tech monopolies. Compliance costs disproportionately affect smaller platforms, while the inherent vagueness in defining "harmful content" can lead to inconsistent enforcement across different services. Moreover, the complex reporting and audit requirements may inadvertently slow platforms' responsiveness to emerging threats. Critics also argue that the European values embedded within the DSA may not universally align with diverse global perspectives on free expression, potentially introducing a cultural bias into content moderation decisions.

Germany

Germany continues to enforce its Network Enforcement Act (NetzDG), which underwent amendments in 2021 to bolster protections against hate speech, misinformation, and other illicit online activities. While operating in conjunction with the DSA for EU-wide compliance, NetzDG independently requires social media platforms with over 2 million users to remove content deemed "clearly illegal" within 24 hours and all other illegal content within seven days. Non-compliance of the laws can result in heavy fines, reaching up to 50 million Euros. The 2021 amendments enhanced transparency requirements for social media reports, mandating increased information content and comparability regarding content moderation decisions, and establishing compulsory counter-notification procedures for users whose content has been removed. The law specifically prohibits content such as defamation of religions and ideological associations, criminal defamation, group insults, Holocaust denial or Nazi glorification, propaganda of unconstitutional organizations, and the dissemination of violent imagery. Notwithstanding these provisions, legal scholars continue to debate whether NetzDG infringes upon Article 5 of the German constitution, which safeguards freedom of expression and the right to information.

Russia

Russia has adopted the most extreme and increasingly authoritarian approach to social media regulation, particularly escalating since 2022. This trajectory has moved far beyond initial legislative drafts to embrace comprehensive digital control. The country has notably banned Meta platforms (Facebook and Instagram) for alleged "extremist activities," with only WhatsApp remaining accessible. Twitter and other major Western social media platforms were also blocked in February-March 2022. By July 2024, nearly 700,000 internet resources had been blocked, and a new law enacted in July 2025 criminalized "searching for extremist content online," marking a significant shift by targeting content consumption rather than solely distribution. Russia's current regulatory toolkit includes complete blocking of foreign platforms during periods of conflict, new restrictions on advertising in "foreign

agent" media outlets, mandatory data localization for all remaining platforms, real-name registration requirements for all users, and technical measures to restrict VPN usage. Instead of imposing fines for non-compliance, Russia frequently resorts to complete platform bans, criminal prosecution of both users and platform operators, and the application of military censorship to all remaining media outlets.

Singapore

Singapore has refined its established reputation for strict content control, evolving beyond its traditional Media Development Authority (MDA) framework. The nation now employs a multi-tiered licensing system, with varying requirements based on platform size and content type. This system integrates the Protection from Online Falsehoods and Manipulation Act (POFMA) with the existing MDA oversight. Singapore has also implemented advanced AI-enhanced monitoring systems capable of detecting prohibited content across multiple languages and has established rapid response teams for 24-hour review of politically sensitive materials. Current regulatory priorities are centered on preserving racial and religious harmony, combating misinformation, implementing youth protection measures, and fostering cross-border content coordination with ASEAN partners. The refined system incorporates appeals mechanisms for content decisions, provides clearer guidelines for content creators, and facilitates regular stakeholder consultations with platforms.

UK

The Online Safety Act 2023 is a new law which protects children and adults online, putting restrictions and checks on social media companies and search services to make them more responsible for their users' safety. The Act applies to services that allow users to post content online or interact with each other, including social media, file sharing, video platforms, forums, dating services, and messaging services. The core focus of the act is child protection, preventing children from accessing pornography, self-harm, eating disorder, and suicide content. Companies can be fined up to £18 million or 10 percent of their qualifying worldwide revenue for publishing content which is against the law of the country.

The comparative analysis of these approaches reveals distinct philosophical and practical differences in addressing social media regulations. Russia represents the most restrictive model through complete platform blocking, while the EU's DSA offers the most comprehensive risk-based regulatory framework. Singapore maintains the most targeted approach through content-specific licensing, and Germany continues to balance free speech protections with hate speech regulation, though this balance remains contentious among legal scholars. Universal challenges persist across all jurisdictions, including difficulties in cross-border enforcement, the complexity of AI and deep fake content detection, balancing automation with human review, addressing encrypted messaging platforms, and coordinating international responses to global platforms.

VIII. CONCLUSION AND POLICY RECOMMENDATIONS

Freedom of speech and expression, given under Article 19(1)(a) of the Indian Constitution, forms the foundation of India's democratic essence. Yet, as digital spaces expand

rapidly, so do the challenges of hate speech, misinformation, cyber defamation, and the erosion of public trust. The unmonitored spread of such content on social media platforms threatens national security, institutional integrity, and social harmony of the country.

There is now an urgent need to draw a constitutional “**Laxman Rekha**” a clear boundary that ensures expression remains free but responsible. Misusing this freedom to incite unrest, undermine judicial credibility, or violate another’s dignity must not be allowed under the guise of democratic rights.

However, overregulation and arbitrary censorship can lead to authoritarianism. As Jawaharlal Nehru rightly said, “To safeguard democracy, the people must have a deep sense of freedom, self-respect and their unity.” Thus, the regulatory response must be balanced, rights-based, and inclusive. India must adopt a multi stakeholder governance approach, involving the government, judiciary, civil society, and digital platforms. Key policy recommendations include:

A. Licensing System for Social Media Influencers:

Drawing inspiration from the UAE model, India should introduce mandatory licenses for individuals and entities using social media for commercial, political, or public influence. These licenses should be issued based on the category of content (e.g., news, health, religion, politics), along with an annual licensing fee to maintain a digital registry and ensure transparency.

B. Enforceable Penalty Mechanism:

A robust system of monetary penalties ranging from ₹50,000 to ₹5 lakh or more should be imposed for violations such as spreading misinformation, hate speech, or unauthorized content. Repeat offenders should face temporary or permanent bans, with provisions for legal recourse to avoid arbitrariness.

C. Child Safety Mandates:

Social media platforms must be held legally responsible for protecting minors from harmful and age-inappropriate content, including pornography, suicide-related material, and self-harm content. Platforms should provide accessible reporting systems and age verification tools.

D. Real-time Grievance Redressal and Accountability:

Platforms should be mandated to implement real-time grievance cells staffed in India with compliance officers answerable under Indian jurisdiction, as per the 2021 Intermediary Guidelines.

E. Awareness and Digital Literacy:

A nation-wide campaign should be launched to educate users especially in Tier-2 and Tier-3 cities, about digital rights, responsibilities, and legal consequences of misusing online spaces.

By building a comprehensive legal regime with enforceable rules, licensing systems, and penalties, India can protect freedom of expression while preventing its misuse. Such a model will ensure accountability, protect national interests, and uphold the dignity of public discourse in the digital age.

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