

1. SC Highlighted Need to Regulate Online Content – Polity

The Supreme Court suggested a tougher line on user-generated content, calling for a neutral, autonomous regulator for social media platforms

Supreme Court Observations & Suggestions

Need for Impartial Regulatory Mechanism – The Supreme Court (SC) emphasized the necessity of establishing an independent, autonomous authority to regulate social media platforms. This regulator must be free from political, corporate, or governmental influence to ensure fairness and neutrality. SC noted that the existing mechanisms often lack neutrality, leading to concerns about bias or selective censorship.

Balancing Freedom of Speech with Public Order – SC reiterated that freedom of speech under Article 19(1)(a) is a key democratic right. However, it cannot be interpreted as absolute; speech that promotes perversity, obscenity, communal disharmony, or violence can be legitimately restricted under Article 19(2). SC stressed the need for a middle path between over-censorship and unregulated digital speech.

Mechanism to Protect Free Speech – The Court suggested that regulatory mechanisms must protect fundamental rights, prevent arbitrary takedowns, and ensure due process. Any regulatory framework must include checks, reviews, and grievance redressal mechanisms to avoid suppressing dissent or legitimate criticism.

Age Verification Using Aadhaar/PAN – SC proposed using digital identity systems like Aadhaar or PAN for age verification, especially to prevent minors from accessing harmful content. However, this opens debates around privacy, data security, and potential misuse, which the government must safeguard.

Four-Week Deadline for Draft Rules – The Union Government has been asked to prepare draft rules for public consultation within four weeks. This indicates urgency in framing comprehensive digital content regulations.

Ministry of Information & Broadcasting (MIB) Response

Amendment to Code of Ethics (IT Rules 2021) – The Ministry plans to amend the Code of Ethics under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These amendments aim to introduce clearer guidelines on obscenity, decency, morality, and national security for online content creators.

Age-Based Content Rating – Similar to movie ratings, digital content may be categorized into age-specific classifications such as U, U/A 13+, A, etc. OTT platforms would be required to label and gate content appropriately, ensuring protection for children.

Bar on “Anti-National” Content – The Ministry proposes guidelines restricting content that undermines sovereignty, integrity, or national security. This derives constitutional support from Article 19(2), which allows reasonable restrictions.

Digital Content Censorship – Meaning & Scope

Broad Definition – Digital content censorship refers to the control, restriction, or oversight of online content by the state or private bodies. It includes –Blocking access to websites/apps under specified grounds. Removal of objectionable social media content. Regulation of OTT content such as films, series, and documentaries. Controls on digital news publishers, online journalism, and portals.

Need for Digital Censorship

Preventing Misinformation & Fake News – Viral misinformation can cause panic, riots, lynchings, and electoral manipulation. Examples include mob lynchings due to WhatsApp forwards and COVID-related misinformation.

Containment of Hate Speech – Communal, caste-based, gendered, or political hate speech can disturb social harmony. Online radicalization is a growing concern for national security agencies.

Protection of Children & Vulnerable Users – Exposure to violent, pornographic, manipulative, or addictive content affects minors negatively. Digital predators and cyber scammers exploit minors via social media.

Platform Accountability – Social media platforms often delay or ignore harmful content takedowns, citing free speech or jurisdictional limits. Algorithms tend to amplify extreme content for engagement.

Prevention of Cybercrimes – The dark web and some social platforms are used for –

1. Child sexual abuse material (CSAM)
2. Drug trafficking
3. Identity theft
4. Financial fraud
5. Human trafficking

Mitigating AI-Driven Threats – Deepfakes, AI-generated pornographic material, and synthetic political propaganda are increasingly dangerous. They harm individual dignity and disrupt democratic processes.

Legal Framework Governing Digital Censorship – Article 19(1)(a) and Article 19(2) – Citizens have the right to free speech, but restrictions can be imposed for –

1. Decency, morality
2. Public order
3. National security
4. Defamation
5. Contempt of court
6. Sovereignty & integrity of India

IT Act, 2000 – Section 69A – Empowers the government to block access to online content in –

1. Interests of sovereignty and integrity
2. Defense of India
3. Public order
4. Friendly relations with foreign states
5. Preventing incitement to offences

Intermediary Guidelines & Digital Media Ethics Code, 2021 – Mandates –

1. Due diligence by social media platforms
2. Grievance officers
3. Traceability of message origin (for significant social media intermediaries)
4. Content classification on OTT platforms
5. 3-tier self-regulation system

OTT Self-Regulation – Digital Publishers Content Grievances Council (DPCGC) oversees compliance. OTT platforms are required to display content ratings and descriptions.

Cinematograph Act, 1952 – Governs film certification via the Central Board of Film Certification (CBFC). Although not directly applicable to OTT, CBFC standards influence policy debates.

Challenges in Digital Censorship

Overreach vs. Underreach – Excessive censorship risks chilling effect on creativity, journalism, satire, political dissent. Insufficient regulation enables harmful content to proliferate.

Transparency Concerns – Government orders under Section 69A are often confidential, raising concerns about secrecy. Platforms rarely disclose detailed takedown rationales.

Jurisdictional Complexity – Many big tech firms operate from outside India and resist local rules. Cross-border data flows complicate enforcement. Rapid Technological Changes Deepfakes, AI-generated content, and encrypted platforms challenge traditional regulatory mechanisms. Manual moderation cannot keep up with the speed of online content creation.

Way Forward

Creating a Strong Independent Regulator – A neutral, court-monitored body comprising legal experts, technologists, child safety experts, and civil society representatives, to –

1. Review censorship decisions
2. Prevent misuse
3. Balance rights and restrictions

Enhancing Transparency – Platforms must publish –

1. Takedown data
2. Algorithmic transparency reports
3. Details of content flagged by government or private bodies

Encouraging Digital Literacy – Citizens must be trained to –

1. Identify deepfakes
2. Detect misinformation
3. Navigate cyber threats

Digital literacy must be included in school curricula.

Multi-Stakeholder Participation – Policymaking must involve –

1. Civil society
2. Online creators
3. Legal scholars
4. Child rights groups
5. Technologists

Ensures legitimacy, inclusivity, and balanced regulations.

Strengthening Algorithms & AI Monitoring – Platforms should be mandated to deploy AI-powered content moderation tools, especially for CSAM, hate speech, and deepfakes.

Ensuring Procedure and Due Process – Users must have the right to –

1. Appeal takedown decisions
2. Seek judicial review
3. Get proper notice before content removal (except in urgent cases)

Source – <https://indianexpress.com/article/legal-news/supreme-court-for-autonomous-online-regulator-govt-says-amending-rules-on-digital-obscenity-10390183/>