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Judicial Approach on Electronic Media and Freedom of Speech & Expression

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Abstract

This paper examines the Indian judiciary's evolving approach to electronic media in light of the constitutional guarantee of freedom of speech and expression. It adopts a doctrinal method to analyze constitutional provisions, statutes, and landmark judgments that shape the balance between Article 19(1)(a) - the right to free speech - and Article 21 - the right to life, dignity, and privacy - in the digital ecosystem. The core argument is that courts have gradually transitioned from a posture of prior restraint (e.g. censorship) to a more nuanced balancing that safeguards speech while enforcing reasonable restrictions with due process. Key findings include the judiciary's application of rigorous tests like proportionality and the "chilling effect" doctrine to invalidate vague laws (such as Section 66A of the IT Act) and its insistence on procedural safeguards in content regulation (e.g. for internet bans or intermediary liability). The contribution of this research lies in synthesizing jurisprudence on electronic media - spanning broadcast, internet, and social media - to outline doctrinal trends and to recommend law and policy reforms. It suggests codifying clearer digital speech standards, strengthening intermediary due process, updating evidence law for electronic records, and issuing judicial guidelines on AI use. In sum, the courts have moved towards principled balancing of rights in the digital sphere, but further reforms are needed to ensure freedom of expression is protected amid the challenges of platformization and AI-mediated communication.

Keywords*: Freedom of speech, electronic media, Article 19(1)(a), Article 21, censorship, intermediary liability, digital evidence, content moderation, AI in judiciary.*

I. Introduction

In India's constitutional democracy, the media - often termed the "Fourth Estate" - plays a pivotal role in informing citizens and holding power to account. Freedom of speech and expression, enshrined in Article 19(1)(a) of the Constitution, underpins this role. As early as 1985, the Supreme Court recognized that "freedom of the press is the heart of social and political intercourse," enabling the public to make informed decisions in a democracy.[1] Electronic media, from television to the internet, have amplified the reach and impact of speech, bringing new opportunities and challenges. The research problem addressed in this paper is how the judiciary has approached conflicts between free expression via electronic media and other competing values, notably the rights to dignity, privacy, and public order (often traced to Article 21 and the reasonable restrictions in Article 19(2)). The rationale for this study lies in electronic media's dual character: it can deepen democratic discourse but also pose risks like misinformation, hate speech, and trial by media. Balancing these aspects is crucial in a constitutional democracy.

Research Questions: This paper asks: (1) How have Indian courts interpreted and applied freedom of speech in the context of electronic and digital media? (2) What standards and tests have been developed to resolve tensions between Article 19(1)(a) and Article 19(2) grounds (such as public order, morality, defamation) in media cases? (3) How do courts reconcile free expression with Article 21 rights (privacy, dignity, fair trial) in the digital era? (4) What is the regulatory framework governing electronic media and how have courts ensured due process within it? (5) What are the emerging issues (e.g. intermediary liability, AI usage) and how might judicial approach evolve or what reforms are necessary?

Objectives and Methodology: The objective is to doctrinally analyze constitutional provisions, statutes, and case law to chart the evolution of jurisprudence on electronic media and speech. The research method is primarily doctrinal, relying on primary sources (constitutional text, legislation, and judicial decisions) and secondary literature. Sources include the Constitution of India (especially Articles 19 and 21), statutes like the Information Technology Act 2000 and legacy media laws, and landmark judgments of the Supreme Court and High Courts. The approach is analytical and historical, tracing how legal interpretations have changed over time with technological evolution. The scope is confined to Indian law, with brief comparative references to U.S. and EU frameworks for context. Limitations include the unavailability of some recent case details and the fact that rapidly evolving technology (like AI) means the legal position is continually developing. The structure of the paper follows a logical progression: Part II clarifies conceptual foundations of "electronic media"; Part III outlines the constitutional framework; Part IV reviews statutory regulations; Part V discusses evidentiary law developments; Part VI analyzes landmark cases on speech and media; Part VII examines how courts balance competing rights; Part VIII addresses platform governance and intermediaries; Part IX explores the intersection of AI with judicial processes; Part X provides thematic case studies; Part XI summarizes findings; Part XII offers recommendations; Part XIII concludes with future outlook.

II. Conceptual Foundations

Defining "Media" and "Electronic Media": The term "media" traditionally encompasses the means of mass communication. "Electronic media" refers broadly to media that use electronics or digital technologies to disseminate content to the public, as opposed to print media. This includes radio, television (broadcast and cable), films, and internet-based platforms (social media, websites, streaming services). For purposes of this paper, the working definition of "electronic media" covers all communication channels that operate through electronic or digital transmission - from the older broadcasting modalities to the newer internet and mobile networks. By this definition, electronic media comprises not only the institutional press and broadcasters but also individual users who publish or share content online (such as bloggers, YouTubers, and social media users). This breadth reflects the reality of the digital age, where any citizen can potentially reach a mass audience through electronic means.

Technological Evolution and the Digital Turn: The landscape of media has undergone profound technological shifts. In the early decades after Independence, communication was dominated by print and by government-controlled broadcast radio (All India Radio) and television (Doordarshan). The 1980s-90s saw a "digital turn" beginning with satellite broadcasting and the introduction of cable television, breaking the state monopoly and leading to a proliferation of private TV channels. The Supreme Court's 1995 judgment in the Cricket Association of Bengal case heralded that "airwaves are public property" and paved the way for private broadcasting in the public interest.[2] By the late 1990s and 2000s, the internet emerged as a disruptive medium, enabling websites, emails, and eventually social media networks that allow instantaneous, global dissemination of content. The evolution can be charted in phases: from terrestrial broadcast to cable and

[1] Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, (1985) 1 SCC 641.

[2] Secretary, Ministry of I&B v. Cricket Association of Bengal, (1995) 2 SCC 161.

satellite transmission, and finally to internet streaming and social media interactivity. Each phase raised new legal questions - for example, the transition from a single government broadcaster to many private channels forced a rethinking of regulatory structures, and the rise of the internet has required courts to apply old legal principles to new forms of communication (such as tweets, videos, and memes).

The "Fourth Estate" and Democratic Accountability: The media has long been metaphorically called the Fourth Estate, emphasizing its watchdog function alongside the three formal organs of government. A free and independent media is regarded as essential for democratic accountability and informed citizenry. Indian jurisprudence has acknowledged this. In **Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India** (1985), the Supreme Court underlined that the press is a public educator and critical for the democratic process. The court noted that the purpose of the press is to advance the public interest by publishing facts and opinions without which citizens cannot make responsible judgments. Although that case concerned a newspaper, the principle applies equally to electronic media. Indeed, television and internet platforms arguably have an even greater impact due to their immediacy and reach. The core democratic rationale is that robust debate and flow of information - even if it includes viewpoints critical of the government - are fundamental to democracy. As Justice Louis Brandeis famously observed in a U.S. context, the remedy for harmful speech is "more speech" (sunlight as disinfectant), not enforced silence. Indian courts too have often preferred counter-speech and self-regulation over heavy-handed censorship. At the same time, the notion of the Fourth Estate carries with it an expectation of responsibility and ethics, which becomes pertinent when media freedoms are abused (e.g. spreading false news or prejudicing trials). Thus, a recurring theme in case law is striking the balance between media freedom and its misuse.

III. Constitutional Framework

Article 19(1)(a): Freedom of Speech and Expression: Article 19(1)(a) of the Indian Constitution guarantees to all citizens the right to freedom of speech and expression. This right is broad and has been judicially interpreted to include freedom of the press, freedom to broadcast, and the right to receive information. Early Supreme Court decisions like **Romesh Thappar v. State of Madras** (1950) established that freedom of expression is foundational for all other freedoms. The protection is not limited to verbal or written speech but extends to all forms of expression, including audiovisual content and electronic communication. Over time, the Court explicitly held that Article 19(1)(a) covers new mediums: for instance, in **Secretary, Ministry of I&B v. Cricket Association of Bengal** (1995), it was recognized that the right of citizens to telecast or broadcast through electronic media is part of the freedom of speech and expression, subject to the regime of licensing and regulations.[3] Commercial speech (advertising) was also brought within the ambit of Article 19(1)(a) by **Tata Press Ltd. v. MTNL** (1995), which overruled earlier skepticism about advertisements, affirming that advertising is a form of speech useful in a consumer society.[4] Thus, the constitutional text, though written in 1950, has been dynamically applied to evolving forms of communication.

Article 19(2): Reasonable Restrictions: Article 19(2) permits the state to impose "reasonable restrictions" on the freedom of speech and expression in the interests of certain enumerated grounds: sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, and incitement to an offence. Any law or executive action curbing speech must fall within one of these specific grounds and must be "reasonable." The requirement of reasonableness entails both substantive and procedural safeguards - the restriction must not be excessive or overbroad, and there should be adequate procedural remedy for those affected. The Supreme Court has been vigilant on this front. For example, in **Shreya Singhal v. Union of India** (2015), the Court struck down Section 66A of the Information Technology Act 2000 for being violative of Article 19(1)(a) and not saved by Article 19(2) - the provision's terms like "annoying" or "inconvenient" speech were not linked to any legitimate ground like public order and were so vague that they permitted arbitrary suppression of speech. This case underscored that restrictions on digital speech (as on traditional speech) must have proximate connection to one of the 19(2) grounds (like incitement to public disorder, or clearly defined defamation etc.) and must not be vague or overinclusive. The judiciary has also developed tests for specific grounds: "public order" restrictions, for instance, require a heightened threshold of incitement or a likelihood of imminent disorder (mere criticism or advocacy without incitement is insufficient to invoke public order) - a principle traceable to cases like **S. Rangarajan v. Jagjivan Ram** (1989) and affirmed in Shreya Singhal. "Decency or morality" has been interpreted in light of community standards but tempered by artistic freedom (e.g., **Aveek Sarkar v. State of W.B.** (2014) on a vulgarity test). In sum, the Court's doctrinal framework insists that any restriction must (a) fall within an Article 19(2) category, (b) be provided by law, and (c) be "reasonable" in the sense

[3] Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd., (1995) 5 SCC 139.

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

of being necessary and proportionate to the harm addressed.

Article 21: Life, Dignity, Privacy - Horizontal vs. Vertical Effect: Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Jurisprudence has read this to protect human dignity, which encompasses privacy and reputation among other aspects. Traditionally, fundamental rights like Article 19 and 21 operate vertically (i.e., enforceable against the State). However, as private platforms and media entities control much of the digital speech environment, there is an ongoing debate on the horizontal application of fundamental rights - whether individuals can claim free speech or privacy rights against private corporations or other individuals. The Supreme Court in recent decisions has hinted at a shift. In **Kaushal Kishore v. State of U.P.** (2023), a Constitution Bench observed that certain fundamental rights (including Article 19 and Article 21) can have horizontal effect, meaning an individual may seek remedy for violation of these rights by another private party in certain situations. This is significant in the context of social media, where the actions of private companies (like removing content or banning users) effectively determine an individual's speech freedom. While Indian law does not yet recognize a full-fledged horizontal enforcement of Article 19(1)(a) (since Article 19 is textually directed at "State" action), the Court in Kaushal Kishore noted that the State has a positive obligation to protect citizens' rights even from private interference, and left open the possibility of evolving mechanisms to address that.[5] Article 21, after **K.S. Puttaswamy v. Union of India** (2017), firmly includes a fundamental right to privacy. This has ramifications for media: publication of personal information, surveillance, and data collection can all impinge on privacy. In the celebrated case of **R. Rajagopal v. State of T.N.** (1994), the Supreme Court balanced freedom of the press with the right to privacy by holding that a citizen has a right to safeguard the privacy of her own and family life, and the media cannot publish private details without consent unless a clear public interest is involved.[6] Thus, when content in electronic media potentially violates someone's privacy or dignity (for instance, revenge porn, or media trials tarnishing reputation), Article 21 concerns come to the fore. The courts have applied "balancing tests" to reconcile Article 19(1)(a) with Article 21, as discussed later in Section VII.

Doctrinal Tensions and Reconciliation Standards: The judiciary has developed certain standards to adjudicate conflicts between free speech and other interests. Three key concepts are: **(a) Proportionality** - any restriction on speech must be proportionate to the legitimate aim pursued. The modern four-prong proportionality test (legitimate goal, rational connection, necessity i.e. least restrictive means, and overall balance) is now part of Indian jurisprudence, especially after **Modern Dental College v. State of M.P.** (2016) and applied in cases like **Anuradha Bhasin v. Union of India** (2020) concerning internet shutdowns.[7] (b) **Overbreadth** - a law that restricts speech will be struck down if it is so broad that it includes protected speech along with unprotected speech. Overbreadth was a key reason Section 66A IT Act was invalidated - it criminalized even harmless or unpopular opinions, thereby overshooting the permitted restrictions . (c) **Chilling effect** - laws or actions that are vague or impose heavy penalties can deter people from exercising their free speech due to fear of punishment, creating a "chilling effect." The Supreme Court has explicitly factored in the chilling effect in free speech cases; in Shreya Singhal the vagueness of terms like "grossly offensive" in Section 66A was held to create an impermissible chilling effect on legitimate expression . More recently, in striking down the 2023 IT Rules amendment for a government "fake news" fact-check unit, the Bombay High Court noted that vague terms without clear standards have a chilling effect, leading intermediaries to over-censor and users to self-censor legitimate speech.[8] To reconcile Article 19(1)(a) and 19(2), courts often use these doctrines: a restriction must be clear (not vague), narrowly tailored (not overbroad), and proportionate. If it fails these tests, it tilts the balance too far against speech and is liable to be invalidated. On the other hand, where speech impinges on Article 21 values like reputation or privacy, courts have sometimes upheld restrictions or crafted remedies (e.g., injunctions, privacy protections) that they deem reasonable and necessary - again invoking proportionality to ensure speech is not curtailed more than needed.

IV. Statutory & Regulatory Architecture

Legacy Statutes and Regulatory Gaps: Electronic media in India grew under laws that were not originally designed for it. The **Indian Telegraph Act, 1885**, for example, was a colonial-era law aimed at telegraphy (and later applied to telephony). Broadcasting (radio and television) for decades operated under this Telegraph Act framework, by treating broadcasting as a form of "wireless telegraphy" subject to government licensing. This led to regulatory gaps, as noted by the Supreme Court: in the Cricket Association of Bengal case (1995), the Court expressly observed that the Telegraph Act was "totally inadequate" for governing

[5] Kaushal Kishore v. State of Uttar Pradesh, (2023) 4 SCC 1.
[6] R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632.
[7] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1; (Justice K.S. Puttaswamy (Privacy-9J.) case).
[8] Kunal Kamra v. Union of India, W.P.(L) No. 9792 of 2023 (Bombay High Court, Judgment dated 20 Sept 2024).

radio and television broadcasting, which had advanced far beyond what the 1885 Act contemplated . The Court urged Parliament to enact a modern law specifically for broadcasting to avoid "uncertainty, confusion and consequent litigation" . That observation highlights how legal regulation lagged behind technology. In the absence of a comprehensive broadcasting law, the government resorted to ad-hoc guidelines and its licensing power. Only in 1997 was a dedicated regulator, the **Telecom Regulatory Authority of India (TRAI)**, set up - and later given certain functions regarding broadcast carriage (though content regulation remained with the Ministry of Information & Broadcasting). Another legacy framework is the **Cinematograph Act, 1952**, which governs films. It mandates that all films be certified by the Central Board of Film Certification (CBFC) before public exhibition, effectively instituting pre-censorship of cinema. This Act too has struggled to keep up with change - for instance, the rise of direct-to-digital online streaming (OTT platforms) initially fell outside its scope, leading to uncertainty until the government brought OTT content under a self-regulatory scheme in 2021. In summary, older statutes often lacked foresight of new media technology, resulting in either regulatory voids or the stretching of old laws to cover new phenomena (as with applying Telegraph Act to TV, or Cinematograph Act to OTT via executive rules). Courts and regulators have been playing catch-up to modernize the legal architecture.

Sector Regulators and Contemporary Statutes: The regulatory ecosystem for electronic media today involves multiple agencies and laws:

- **Telegraph Act, 1885 and Wireless Telegraphy Act, 1933:** These still provide the basic licensing framework for broadcast spectrum (airwaves). Section 4 of the Telegraph Act gives the government monopoly over telecommunication and broadcasting, which it can license to others. This was the basis for Doordarshan/All India Radio's monopoly until the 1990s and later for giving licenses to private FM radio, TV channels (downlinking/uplinking permissions), etc. However, content oversight via this Act is minimal, leading to reliance on other laws.

- **TRAI Act, 1997:** The Telecom Regulatory Authority of India Act created TRAI to regulate telecommunications. In 2004, its mandate was expanded to include broadcasting services (definition of "telecommunication service" was broadened to cover broadcast). TRAI mainly deals with technical and tariff issues (e.g., spectrum allocation, cable pricing). It recommended a Convergence Law to unify telecom and broadcasting regulation, but that has yet to be enacted.

- **Cable Television Networks (Regulation) Act, 1995:** This law regulates cable operators and provides programming codes and advertising codes that cable channels must follow. Violation can lead to program prohibitions. It's an example of content regulation statute for electronic media (though the codes are broad and enforcement uneven).

- **Cinematograph Act, 1952:** As noted, it provides for film certification (with categories like U, A, etc.) and empowers the CBFC to cut or refuse films if they violate certain guidelines based on sovereignty, decency, etc. Films cannot be shown publicly without CBFC clearance. This is a prior restraint but upheld by the Supreme Court in **K.A. Abbas v. Union of India** (1971) as a permissible restriction under Article 19(2) (with the Court cautioning that the censorship must be based on reasonable, non-arbitrary guidelines).[9]

- **Information Technology Act, 2000 (IT Act) - as Amended:** The IT Act has become a central statute for digital media. Originally enacted to facilitate e-commerce and define cyber offenses, amendments (especially in 2008) added provisions directly impacting online speech. Key definitions in the Act include "computer", "computer network", "computer resource", "communication device" (which covers cell phones, etc.), "electronic record" (data generated or stored digitally), and "intermediary" (any service provider who enables online interactions, such as ISPs, social media platforms). Several sections are noteworthy:

    - **Section 69A:** empowers the central government to direct intermediaries to block access to any information online if it is necessary in the interest of sovereignty, security of state, friendly relations, public order, etc. This section, upheld by the Supreme Court in Shreya Singhal, has an established procedure (Blocking Rules, 2009) requiring a government committee to review requests and record reasons. However, the orders passed under 69A are usually

[9] K.A. Abbas v. Union of India, 1971 AIR 481 (SC) / (1970) 2 SCC 780.

confidential, and users often are unaware of why content is removed, raising due process concerns despite the procedure.

- **Section 79 (Intermediary Liability) and the 2021 Rules:** Section 79 grants intermediaries a "safe harbour" from liability for third-party content, provided they observe due diligence and do not knowingly host illegal content. In Shreya Singhal, the Court read down Section 79(3) to mean that intermediaries must take down content only upon receiving a court order or a government directive, not simply on user complaints . Subsequently, the government issued the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**, which specify due diligence that intermediaries must follow - e.g., content removal upon actual knowledge (as defined by Shreya Singhal), grievance redressal mechanisms, etc. These Rules also bring digital news and OTT platforms under a self-regulatory framework. In 2023, further amendments to these Rules were made, notably introducing a government-notified Fact Check Unit (FCU) with power to identify "fake or false" content related to government business, which intermediaries are expected to remove to retain immunity. This expansion raised immediate concerns of censorship and was legally challenged .

- **Intermediary Due Diligence and Liability Limits:** The interplay of Section 69A and 79 is crucial - if platforms comply with blocking orders and other requirements, they remain immune from liability (safe harbour). But if they fail, they can be treated as having published the content themselves and face legal consequences. The Rules of 2021 (amended in 2022 and 2023) have tightened obligations: e.g., requiring traceability of originators for large messaging services, mandating time-bound complaint handling, etc. While aimed at greater accountability for Big Tech, these raise questions about surveillance and privacy (traceability potentially undermines encryption) and about administrative censorship (through agencies like the Fact Check Unit). Courts are seized of these matters - in **Kunal Kamra v. Union of India** (2023-24), the Bombay High Court struck down the Rule enabling the FCU on grounds of vagueness and overreach, holding it violated Articles 14 and 19(1)(a) by effectively making the government an arbiter of truth in absence of procedural safeguards .

- **Other Acts:** The **Indian Penal Code (IPC)** and other laws also regulate electronic speech by general provisions - e.g., IPC Sections 124A (sedition), 153A (promoting enmity), 295A (hurting religious sentiments), 499 (criminal defamation) etc., have all been applied to statements made on TV or social media. These are content-neutral in the sense of medium (apply to speech anywhere), but their use in the context of electronic media has been contentious (e.g., multiple FIRs in different states for one online post, causing chilling effect - an issue that reached the Supreme Court in the case of journalist *Mohammed Zubair*, where the Court granted him relief noting the tendency of such proceedings to silence criticism).

In summary, India's statutory framework for electronic media is a patchwork of legacy laws and newer IT regulations. The judiciary often has to interpret these in light of constitutional guarantees. One of the critiques is that executive regulations (like the IT Rules) sometimes exceed the scope of the parent Act or impose broad restrictions without clear legislative guidance, leading to legal challenges and judicial corrections. The need for comprehensive legislation - such as a Digital Media Act or updated broadcasting law - has been pointed out repeatedly (by the Supreme Court in 1995 and by expert committees), but a unified code is yet to materialize. This statutory backdrop forms the canvas on which judicial decisions paint the finer contours of free speech protections and restrictions for electronic media.

V. Evidence Law in the Digital Age

The rise of electronic media and communication has dramatically affected the law of evidence, particularly regarding admissibility and proof of electronic records. The Indian Evidence Act, 1872 was amended in 2000 (and further in 2009) to accommodate electronic evidence. Key provisions include:

- **Section 3 (Definition of Evidence):** amended to include electronic records produced for inspection by the court.

- **Sections 65A and 65B:** introduced to lay down conditions for admissibility of electronic records. Section 65A declares that electronic records may be proved only in accordance with Section 65B (a special provision, thereby excluding the application of the usual document proof sections where applicable). Section 65B(1) says any information contained in an electronic record (outputted on paper, optical or magnetic media) is admissible as evidence of contents if it meets the conditions of 65B(2)-(4). Crucially, Section 65B(4) requires a certificate to be produced, signed by a responsible official, certifying the manner in which the electronic record was produced and validating the integrity of the device used. This is commonly known as the "65B certificate."

- **Sections 45A:** allows opinion of examiner of electronic evidence (forensic experts) as relevant, recognizing need for expert assistance in complex digital evidence.

- **Section 22A:** concerns the relevance of oral admissions as to contents of electronic records (generally not relevant unless the genuineness of the record produced is in question).

- **Section 59:** clarifies that content of documents (including electronic documents) must be proved by documents themselves (or secondary evidence), not by oral testimony, reinforcing the best evidence rule.

Admissibility & Authenticity Standards: The judiciary initially struggled with the technical requirements of Section 65B. A landmark ruling came in **Anvar P.V. v. P.K. Basheer** (2014), where a three-judge bench of the Supreme Court emphatically held that Sections 65A and 65B form a complete code for electronic evidence, and that production of the Section 65B certificate is mandatory for any electronic record to be admitted as evidence.[10] In that case, some video CDs were produced without the certificate and the Court refused to read them in evidence, overturning the High Court's contrary approach. Anvar overruled an earlier 2005 precedent (State v. Navjot Sandhu, the Parliament Attack case) which had allowed secondary evidence of electronic record via other means. After Anvar, the law was that no matter how genuine a CD or printout might appear, without the certificate of authenticity, it could not be admitted to prove its contents. This strict position was later revisited: in **Shafhi Mohammad v. State of H.P.** (2018), a two-judge bench relaxed the requirement, suggesting that if obtaining a certificate is impracticable (e.g., device owner is unwilling or foreign), the evidence could still be let in. However, a conflicting view emerged and the matter went to a larger bench. Ultimately, in **Arjun Panditrao Khotkar v. Kailash Gorantyal** (2020), a bench of five judges reaffirmed the primacy of Section 65B and clarified that the certificate is mandatory, except in situations where the electronic record is produced by a device not in control of the party (in which case the party can apply to the court to require the opponent or concerned person to produce the certificate, or the court may otherwise relax in the interest of justice).[11] Arjun Panditrao thus settled that Anvar was correct in principle: a proper certificate is a precondition to admit electronic evidence, though practical mechanisms exist to address scenarios of inability.

The emphasis on the certificate is to ensure authenticity - the certificate must describe the manner of creation of the record, identify the device, and affirm that the record is a true copy of the original data. This ties into the evidentiary concept of a "best evidence rule" for digital content. The certificate effectively serves as authentication of the source. In addition, the Evidence Act allows cross-examination of the person issuing the certificate if necessary, and the opposing party can always challenge the integrity or operation of the device or the record's authenticity even after admission, which then goes to weight rather than admissibility. Courts have been mindful that digital data can be easily altered, so strict conditions are justified to avoid miscarriage of justice through tampered or unverified electronic material.

Notable Judicial Developments in Electronic Evidence:

- **State of Maharashtra v. Praful B. Desai** (2003): The Supreme Court in this case tackled whether recording a witness's testimony via video conferencing is acceptable under the Criminal Procedure Code requirement that evidence be recorded "in the presence of the accused." The Court held that "presence" does not only mean physical presence - presence via video conferencing satisfies the requirements of fairness and hence is permissible.[12] This was a forward-looking decision, effectively treating a live video link on par with physical presence in court. It paved the way for widespread use of video conferencing in court proceedings, a practice that became

[10] Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473.
[11] Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.
[12] State of Maharashtra v. Praful B. Desai (Dr.), (2003) 4 SCC 601.

indispensable during the COVID-19 pandemic years later.

- **Tukaram S. Dighole v. Manikrao S. Kokate** (2010): This was an election case where a video-CD of an allegedly defamatory speech was produced as evidence. The Supreme Court used the occasion to comment on standards of proof for electronic evidence. It observed that electronic evidence must be assessed with caution and a higher degree of proof of accuracy because of its susceptible nature (possibility of editing, etc.).[13] In that case, the CD's contents could not be fully relied upon without proper authentication and corroboration. The Court reiterated that new technology evidence, while admissible, requires the court to ensure its reliability through the statutory safeguards (like Section 65B compliance) and careful evaluation.

- **Anvar P.V. v. Basheer** (2014) and **Arjun Panditrao** (2020) - as discussed, settled the certificate requirement. Since then, trial courts have become more rigorous: evidence such as CCTV footage, call records, social media posts, etc., are routinely demanded to come with 65B certificates. An example of issues is when police seize a mobile phone; at trial, they must produce a certificate regarding extraction of its data. If they fail, vital evidence might be excluded. This has, in some instances, led to acquittals due to technical non-compliance. The judiciary and legislature are aware of this and there are calls to simplify or clarify the process (some suggest allowing alternate means of authentication if no certificate, etc., but until law changes, the current doctrine stands).

In summary, the digital age forced evidence law to adapt through new provisions and case-law interpretations. The Indian courts have generally aligned with global best practices by insisting on authenticity and chain-of-custody for electronic evidence. As electronic media content increasingly features in litigation (be it criminal cases relying on phone records, or civil defamation suits based on TV/online statements), these evidentiary rules form an important supporting framework ensuring that only credible electronic material is used to establish facts.

VI. Landmark Judicial Trajectory on Speech & Electronic Media

The judiciary's approach to speech on electronic media can be traced through landmark cases, evolving from issues of film and broadcast censorship to contemporary internet speech challenges.

Early Censorship and Commercial Speech: In the initial decades, cases often dealt with government control over media content and questions of whether certain types of speech were protected. **K.A. Abbas v. Union of India** (1971) was a pioneering case concerning prior censorship of films under the Cinematograph Act. Filmmaker K.A. Abbas challenged the requirement that films be certified (and potentially cut or banned) before public exhibition, arguing it violated free expression. The Supreme Court, in a nuanced decision, upheld the constitutionality of film censorship as an acceptable reasonable restriction under Article 19(2) . The Court reasoned that motion pictures have a strong impact due to their audio-visual nature and could affect public order or morality more directly than printed words. However, the Court also laid down that censorship must be guided by clear principles - it acknowledged that artistic and socially relevant cinema should be given leeway and that the power cannot be used arbitrarily. The case set the tone that different media might warrant different treatment; what might be permissible in a book might be censorable in a film because of the medium's reach and impact. Around the same era, **Hamdard Dawakhana (Wakf) v. Union of India** (1960) dealt with advertisements - the Supreme Court held that a law prohibiting certain advertisements (in that instance, for alleged aphrodisiacs) did not violate Article 19(1)(a) because advertising for commercial gain was not deemed "speech" at the heart of the freedom.[14] The Court opined that an advertisement primarily aiming to induce sales was part of business (and could be regulated under 19(6) as trade), not expression of ideas. This view, however, did not last. In **Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.** (1995), the Supreme Court overturned the earlier stance and categorically held that commercial speech (advertising) is protected under Article 19(1)(a) . The Court noted that advertisements serve consumers by providing information about products and that "the public's right to know" makes even commercial advertisements valuable. Consequently, any regulation of ads must meet Article 19(2)'s tests (e.g. misleading advertisements can be restricted in consumer interest, which would fall under "public interest" or "morality" perhaps). This shift was significant as electronic media heavily depend on advertising revenue; recognizing ads as speech meant government can't arbitrarily ban commercials except on permitted grounds.

Broadcasting & Access to Airwaves: For many years, Indian citizens had no right to broadcast - the government had a monopoly. This changed with **Secretary, Ministry of I&B v. Cricket Association**

[13] Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329.

[14] Hamdard Dawakhana (Wakf) v. Union of India, AIR 1960 SC 554.

of Bengal (1995). The Cricket Association of Bengal (CAB) had organized a cricket tournament and wanted to uplink the signal through a private foreign broadcaster since Doordarshan demanded certain rights. The Supreme Court held that airwaves are public property and that the freedom of speech and expression includes the right to disseminate information through electronic media, subject to allocation of frequencies by a public authority . Importantly, the Court recognized broadcasting as part of 19(1)(a) and said the state's monopoly was not justified by any law under 19(2) and was primarily due to absence of statute. The Court suggested creating an independent public authority to regulate airwaves. This case opened the door for private and community broadcasters by underlining that citizens have a right to access broadcasting media. It led indirectly to the Phase of licensing private TV channels and FM radio in India (and proposals for a Broadcast Regulatory law, although a comprehensive law like the Broadcasting Bill never got through). The judgment also articulated that in allocating frequencies, the public's right to diverse viewpoints should be considered, not just government control. Thus, CAB's case is a landmark for pluralism in electronic media.

Online Speech, Overbreadth, and Chilling Effect: The advent of the internet posed new legal questions which culminated in the Supreme Court's seminal ruling in **Shreya Singhal v. Union of India** (2015). Two young people had been arrested under Section 66A of the IT Act for a Facebook post, sparking a constitutional challenge to that provision. Section 66A criminalized sending via computer any information that was "grossly offensive" or caused "annoyance" or "inconvenience," among other vague terms. The Supreme Court struck down 66A in its entirety for violating freedom of speech . The judgment is notable for bringing the American doctrines of vagueness and overbreadth into Indian law: the Court held 66A was worded such that it covered both offensive speech (which is not a listed restriction) and also trivial harmless speech - thus it was not a narrow restriction but a blanket muzzle on free expression. The Court was also concerned about the **chilling effect** - people would fear posting anything remotely controversial lest it be deemed "offensive" by authorities, leading to self-censorship . Shreya Singhal also read down Section 79 (intermediary liability) and upheld Section 69A (blocking) while emphasizing procedural safeguards. The Court insisted that intermediary takedowns must follow either a court order or a government order under proper procedure - protecting users from arbitrary removal of content just on private complaints. In doing so, it acknowledged that the internet is a unique sphere where misuse can spread rapidly, but the answer is not unbridled powers to police speech. The decision had a sweeping effect: countless FIRs under 66A were quashed, and it emboldened challenges to other speech-curbing rules. It stands as a guarantee that online speech is as much protected as offline speech. However, Shreya Singhal also left some questions - for example, upholding Section 69A's blocking power assumed the government committee process is sufficient safeguard, something that is being debated today (since blocking orders are secret, users have no chance to defend their content, etc.).

Contemporary Contours of Prior Restraint and Injunctions: Beyond criminal law, a significant area is civil injunctions against media content - essentially prior restraints. Traditionally, courts have been extremely reluctant to impose prior restraint on publication because of the heavy presumption in favor of free press (post-publication remedies like defamation suits are the norm). However, with 24x7 TV and online news, there's been a rise in corporations or individuals seeking gag orders to prevent publication of potentially defamatory or sensitive material. A recent Supreme Court ruling in 2024, in the **Bloomberg v. Zee Entertainment Enterprises** matter, shed light on the standards for such injunctions. In that case, a trial court had, ex-parte, restrained Bloomberg (a media outlet) from publishing or even continuing to host an article about a regulatory investigation involving the Zee group, on the plea of defamation. The Supreme Court set aside that injunction . It agreed that the basic three-prong test for interim injunctions - **prima facie case, balance of convenience, and irreparable harm** - is well-established . However, it criticized the lower court for a mechanical application of this test without detailed reasoning on how they were met, especially given the free speech implications . The Supreme Court emphasized additional factors: when considering an injunction against media, a court must also weigh the public's right to know and the chilling effect on press freedom . The bench noted that even if defamation is alleged (which involves the Article 21 right to reputation), an interim gag order "prevents the public from knowing about or participating in matters of public interest" and thus isn't to be granted lightly . The Court referenced the concept of **SLAPP suits** (Strategic Lawsuits Against Public Participation), observing that powerful entities increasingly file lawsuits not necessarily to win on merits, but to silence critics or journalists through court orders and litigation costs . It warned that unwarranted pre-trial injunctions in such cases can act as a "death sentence" to the publication and thereby stifle free speech.[15] The outcome of this case reaffirmed that prior restraint is an extraordinary remedy: unless the impugned content is clearly illegal or defamatory and no lesser measure would suffice to protect the plaintiff's rights, an

[15] Bloomberg Television Productions (I) Pvt. Ltd. & Anr. v. Zee Entertainment Enterprises Ltd. & Ors., Supreme Court Order dated 22 March 2024 (SLP(C) No. 1050/2024).

injunction should not be granted. Instead, post-publication remedies (like damages or a clarification) are preferable to maintain the balance between reputation and speech.

Executive Fact-Checking & Safe Harbour Debates: In 2023, a novel issue arose with the government's introduction of a "Fact Check Unit" (through the IT Rules amendment) to identify fake news about government affairs and consequentially require its removal from online platforms. This was seen as the executive assuming the role of an arbiter of truth, raising Article 19(1)(a) alarms. Comedian Kunal Kamra and others challenged this in Bombay High Court (**Kunal Kamra v. Union of India**). In 2024, the High Court struck down the rule, finding that it went beyond the IT Act's scope and violated free speech . The court noted that terms like "fake, false, misleading" were undefined and vague, giving the government a carte blanche to brand criticism as fake news, which creates a serious chilling effect . Moreover, tying compliance to loss of Section 79 safe harbour essentially coerced intermediaries into acting as censors for the government. Justice G.S. Patel, in his opinion, remarked that the rule made the government "judge and prosecutor" in its own cause and lacked any independent oversight or right of hearing for content creators . This judgment brings to the fore the safe harbour erosion risk: if laws impose onerous content-policing duties on intermediaries under threat of liability, platforms will likely over-comply (remove more content than necessary) to protect themselves, thereby undermining citizens' online speech. The safe harbour principle, originally meant to allow platforms neutrality and only compel action pursuant to clear illegality, is being tested by pressures to make platforms pro-active monitors of content (for hate speech, misinformation, etc.). Courts will likely be the referee to ensure that any such obligations are constitutionally bounded. The debate is ongoing - an appeal in Kamra's case may reach the Supreme Court - but the direction of the judiciary appears to favor procedural safeguards and independent checks (for instance, the suggestion that if a fact-check mechanism is needed, it should be by an independent body, not the government itself, to avoid conflict of interest).

Judicial Restraint in Pending Certification/Clearance: Another notable aspect of judicial approach is self-restraint in matters where a statutory body is vested with primary authority. The **Padmavat (formerly Padmavati) film controversy** exemplifies this. In **Manohar Lal Sharma v. Sanjay Leela Bhansali** (2018), a petitioner sought a ban on the release of the movie *Padmavati* citing hurt sentiments and potential law and order issues. The Supreme Court dismissed the petition as premature and misconceived since the film had not yet been certified by the CBFC . The Court strongly reprimanded attempts to bypass the statutory process, observing that those holding public offices should refrain from commenting on or pre-judging a film yet to be examined by the competent authority (CBFC) . Chief Justice Dipak Misra famously stated that all concerned must be guided by the "rule of law" and not venture into passing premature comments or imposing extra-legal sanctions on a creative work pending certification.[16] This episode, and similar orders, reflect the judiciary's stance that public pressure or threats of violence cannot be allowed to dictate the fate of a film; the correct course is to let the CBFC do its job and then, if still aggrieved, seek legal remedy. By refusing to entertain PILs demanding bans (and later by directing states to ensure law-and-order for the film's screening once certified), the Court reinforced the principle that prior restraint is an exception, not the rule, and that there are institutional channels for grievances which must be respected.

Through these landmark events - from film censorship in Abbas, commercial speech in Tata Press, broadcast rights in CAB, to internet freedom in Shreya Singhal and beyond - one sees the courts gradually expanding the protective umbrella of Article 19(1)(a) to cover new media, while also refining the conditions under which the State can legitimately restrict speech. The trajectory shows a clear thread: greater clarity and stricter scrutiny for restrictions (no vague laws, no broad censorship), greater emphasis on due process and independent review, and an understanding that technological context matters (e.g., acknowledging how fast misinformation can spread online but also how essential the internet is for speech).

VII. Rights Collisions & Balancing Tests

As electronic media has amplified speech, it has also accentuated conflicts between rights - notably between the speaker's freedom (Article 19(1)(a)) and other individuals' rights under Article 21 (dignity, privacy, reputation) or societal interests like public order. The judiciary has increasingly had to perform delicate balancing acts, employing various tests to resolve these collisions.

Article 19(1)(a) vs Article 21 (Dignity, Privacy, Reputation): A classic clash is between free press and the right to privacy. In **R. Rajagopal v. State of T.N.** (1994) , the Supreme Court weighed a magazine's freedom to publish the autobiography of a prisoner (which contained allegations against public officials) against those officials' right to privacy. The Court carved out a rule: so long as the published material is based on public records or the person's consent, it is protected - but if it concerns purely private life and has

[16] Manohar Lal Sharma v. Sanjay Leela Bhansali, AIR 2018 SC 86 (Order in Writ Petition (Criminal) No. 186/2017, decided 28 Nov 2017).

no public record basis, publishing it without consent could violate privacy and attract liability . This doctrine protected the press when acting in public interest or reporting on public records, while recognizing individuals (especially not in public life) have a right to be let alone. In defamation law, the collision is with reputation - the Supreme Court in **Subramanian Swamy v. Union of India** (2016) upheld criminal defamation (IPC §§499-500) as constitutional, treating reputation as part of dignity under Article 21 that can justify reasonable restrictions on speech. However, even in that judgment, the Court noted the importance of truth and public interest as defenses, implicitly balancing the values. Another facet is fair trial rights (also Article 21) vs media publicity: courts have held that media freedom does not extend to prejudicing an ongoing trial or investigation. For instance, in **Sahara v. SEBI** (2012), the Supreme Court said that if media reporting is seriously interfering with a criminal defendant's right to a fair trial, the court can pass "postponement orders" delaying publication of certain proceedings to protect the trial, an extraordinary measure but one grounded in balancing the fundamental rights of the accused (Article 21) with press freedom.[17] The Court thus acknowledged that in appropriate cases, fair administration of justice may require temporary curbs on reportage (a narrowly tailored restriction). The underlying principle in all these is that neither right is absolute; where they conflict, a reconciliation through proportionality is needed. In recent times, right to privacy acquired greater heft after **Puttaswamy** (2017) declared it fundamental. This implies that, for example, unauthorized use of personal data by media or doxxing someone's private information could be challenged as Article 21 violations, compelling courts to craft remedies that still respect media freedom. An emerging issue is the "right to be forgotten" (erasure of personal data from public web) - High Courts have started entertaining such claims, which pit individual privacy against the public's right to information and archive (a free expression aspect). The legal standards for these are in infancy, but likely the courts will import proportionality: considering factors like the person's public role, the nature of information, its relevance over time, etc., in deciding if a takedown is justified.

Horizontal Effect and Private Platforms: As discussed earlier, there is debate whether fundamental rights can be invoked against private entities like social media companies. Traditionally, if Twitter removes a user's content, it's not "state action" so Article 19 doesn't directly apply. However, given the quasi-public square role of big platforms, there are arguments for at least indirect horizontal effect - i.e., courts via statutes or interpretation impose duties on private platforms to uphold certain standards of free speech and fairness. One sees a hint of this in the intermediary guidelines which mandate procedural safeguards (like notice to users, reasons for takedown) - these echo due process even in private enforcement. The Supreme Court's observation in Kaushal Kishore (2023) about horizontal application opens the door for litigants to argue that their constitutional speech rights are affected by private censorship and that the law should recognize a remedy. In one ongoing case, a politician had argued that his Twitter account suspension violated his rights. While no final ruling has come forcing a private platform to restore an account on fundamental rights grounds, courts have sometimes leaned on platforms by highlighting principles of fairness and public interest (for instance, the Delhi High Court in a case regarding account suspension suggested that even if not bound by constitution, platforms should not act arbitrarily as they provide an important forum). It will be interesting to see if Indian jurisprudence evolves something akin to a "constitutional third-party effect" doctrine explicitly or continues to rely on statutes (like saying if a platform doesn't follow its own policies, it could be manifest arbitrariness under Article 14, thereby indirectly applying constitutional norms). For now, we can say the debate is recognized but not resolved; however, by acknowledging horizontal dimensions, the Supreme Court has signaled that fundamental rights discourse is not strictly confined to public sector in the digital age.

Tests Applied by Courts - Proportionality, Necessity, Least Restrictive Means: The proportionality test has become the touchstone in rights balancing. For example, when examining a restriction like an internet shutdown, the Court in **Anuradha Bhasin** (2020) applied it: was the measure suitable for the goal (yes, stopping rumor-spread), was it necessary (could a narrower blocking suffice?), and was it the least restrictive (geographically and temporally limited?) . The Court concluded that indefinite shutdowns fail the test of proportionality, hence are illegal, and mandated periodic review of such orders . Similarly, in privacy vs speech cases, proportionality would ask: is the invasion of privacy via publication justified by a larger public interest or could the story have been told without identifying details? If a lesser intrusive means (like anonymizing a victim's identity) is available, that should be chosen over an absolute publication ban or, conversely, over an absolute free rein to publish everything. The **necessity** prong often decides cases: e.g., if a government's legitimate aim of preventing hate speech can be achieved by penalizing incitement (already illegal) rather than broadly censoring all harsh speech, then a broad new restriction is not necessary and hence not valid. In **Shreya Singhal**, the absence of a proximate link to public order or other grounds made

[17] Sahara India Real Estate Corp. Ltd. v. Securities & Exchange Board of India, (2012) 10 SCC 603.

66A not a necessary restriction - it was aimed at a broad swath of speech with only a tenuous relation to any ground, thus failing necessity.

Overbreadth & Vagueness Analysis: Indian courts now explicitly use these U.S.-origin concepts. A vague law (one that does not clearly define what is prohibited) violates Article 14 (equality before law) and 19(1)(a) because it gives excessive discretion to law enforcers and chills citizens' speech. Overbroad laws (which are clear but go beyond the permissible range) violate 19(1)(a) because they restrict more speech than warranted. For instance, a law banning "any depiction of violence in media to prevent crime" would be overbroad - it would outlaw legitimate news or artistic depictions that are important. **Shreya Singhal** is again exemplar: terms like "annoying, inconvenient" are not only vague (one cannot be sure what falls in that category) but also overbroad (they cover protected speech). The Court's willingness to invalidate statutes entirely on these grounds sends a message to the legislature to draft narrowly. This doctrine was reaffirmed in the 2023 Bombay HC decision on the Fact-Check Unit - calling the rule vague and overbroad, thereby unconstitutional . Even in civil contexts, a condition like "OTT content should not offend general morality" would likely be held void for vagueness if challenged, for want of clarity on what "offend" and "general morality" mean. The combined effect of these doctrinal tests is a more speech-protective stance: laws have to be precise, targeted, and minimally restrictive, or else the judiciary will step in.

Application to Hate Speech, Misinformation, and Harassment: These are among the hardest categories. Hate speech (words attacking a group's ethnicity, religion etc. that can incite discrimination or violence) is not explicitly listed in Article 19(2) except insofar as it may relate to public order, morality, or security of State. Indian penal law does criminalize certain hate speech (Sections 153A, 295A IPC). Courts generally uphold these on the rationale that speech propagating hatred is an offense to dignity and can undermine public order. Yet, drawing the line is tricky: when does a political speech become hate speech? The Supreme Court has often said mere discussion or advocacy, even if unpopular or harsh, is different from incitement (which is punishable). The **"clear and present danger"** or **"spark in a powder keg"** test from Rangarajan's case is instructive: State cannot suppress speech on account of reaction unless the connection between the speech and the danger is real and imminent. For instance, communal insults delivered to an agitated crowd might be punishable, but abstract bigoted opinions on an online post might not meet incitement threshold (though they may be hateful). Courts are currently hearing petitions on hate speech, and some interim orders have directed authorities to take suo motu action against hate speech by anyone (even without official sanction, indicating an attempt to enforce existing laws strictly). For misinformation (fake news), it's another gray area: false statements per se are not an enumerated ground to curb speech (unless they fall under defamation, public order etc.). The government's attempt via FCU to effectively censor "fake news" has been met with judicial skepticism . Courts likely would allow action against misinformation only if it causes or is likely to cause a public harm that fits 19(2) (for example, false news that incites panic or violence could be tackled under public order or security; but general falsehoods might have to be countered by rebuttal rather than censorship). Digitally mediated harassment (like cyber stalking, doxxing, bullying) pits free speech against the individual's rights to life and privacy. The judiciary has supported penalizing severe harassment (there are IT Act and IPC provisions for obscenity, stalking, threats). In doing so, they have not seen it as a freedom issue because harassment is not legitimate expression but an attack on a person's safety and dignity. However, the challenge is ensuring laws in this arena are not abused to curb legitimate speech. For example, a law against "grossly harmful" messages could be abused if not defined properly. Hence, any future legal reform on hate speech or cyber-harassment will have to incorporate the precision and proportionality that the courts demand. Indeed, the Law Commission in its 267th Report (2017) suggested new provisions for hate speech with clearer scope, but those are yet to be enacted. Should such law be passed, it will surely be tested for constitutionality under the lenses described.

VIII. Platform Governance, Intermediary Duties, and Due Process

The proliferation of user-generated content platforms (Facebook, Twitter, YouTube, WhatsApp, etc.) has shifted the focus of free speech regulation: rather than the state directly censoring, much of content moderation is done by private intermediaries enforcing their policies or in compliance with state directives. Courts have engaged with how the law should structure this triadic relationship (user-platform-state) to protect rights.

Notice-and-Takedown vs. Court-Ordered Removal (post-Shreya Singhal): Prior to 2015, India's IT intermediary rules (2011) followed a "notice-and-takedown" approach: if anyone notified a platform of offensive content, the platform had to remove it within 36 hours or risk losing safe harbour. This led to many instances of overzealous takedowns, as platforms would remove upon any complaint to avoid liability, with little verification - causing censorship of even legitimate speech (chilling effect). In **Shreya Singhal** , the Supreme Court put an end to that regime by reading down Section 79: intermediaries are required to act only upon receiving (a) a court order, or (b) a notification from an appropriate government agency that certain content is unlawful. Essentially, the Court interposed an authority (judicial or executive) between the complaining person and the takedown - to avoid

arbitrary private censorship. This transformed India's intermediary liability stance to a "court-ordered removal" model. For instance, if a person is defamed online, they should approach a court for an order directing the platform to remove the content, instead of just sending a legal notice to the platform. The rationale is to safeguard against frivolous or malicious takedowns by ensuring a due process (the court would hear the content creator possibly, or at least apply mind to legality). However, the government was also empowered (under Sec 69A and now certain emergency provisions in IT Rules) to order removals, which is an executive route but again has procedural requirements. Post-Shreya, the 2021 IT Rules formalized a process: users can complain to platforms, but platforms are not legally mandated to remove unless it's something like sexual abuse material or another law specifically requires swift action. In practice though, platforms do voluntarily remove a lot under their terms of service. The key legal position is that without a court/government order, failure to remove does not negate their safe harbour (except for certain specific content categories). This has been vital in protecting intermediaries from pressure and thereby protecting user content indirectly.

Transparency, Reasons-Giving, and Appeal in Content Moderation: A significant due process concern is that when content is removed or accounts suspended by platforms (either on their own policy enforcement or on government request), users often have little recourse or even information. The ideal of natural justice suggests users should be informed of the reason and given a chance to contest. The IT Rules 2021 made some strides: they require intermediaries to publish their content rules, notify users upon removal of content or disabling of account, and provide reasons and an avenue for dispute (appeal to the platform's grievance officer) within a defined time.[18] Furthermore, in 2022, the Rules were amended to create Grievance Appellate Committees (GACs) at the government level - so if a user is dissatisfied with a platform's resolution of their grievance regarding takedown, they can appeal to this committee. This is a novel mechanism and somewhat controversial (critics say it allows government to influence content decisions, supporters say it gives users a remedy without going to court). The emphasis on transparency is echoed internationally (e.g., the EU's DSA mandates detailed transparency reports from platforms on their content moderation actions, which Indian law also now asks in annual compliance reports). Courts have also nudged platforms on fairness: in cases like *Ajit Mohan v. Delhi Assembly* (2021), although primarily about Facebook's role in riots, the judgment noted the power of social media companies and implied that some form of accountability is expected. We have yet to see an Indian court explicitly declare a due process right for users vis-à-vis platforms, but the direction of regulations is to impose quasi due-process duties on platforms. For instance, if Twitter were to suspend an Indian user without giving any reason, the user could complain under the IT Rules to the grievance officer, and potentially escalate. If that fails, conceivably a writ to court could be filed arguing unfair practice - some have argued that since these companies significantly affect rights, writs should lie against them (an argument not settled). The requirement of reasoned orders and appeal in the new rules is an attempt to preempt such litigation by offering an administrative remedy. How effective these mechanisms are remains to be seen; initial response is mixed with concerns of government influence, but nonetheless, they represent an embedding of due process values in content moderation.

Safe Harbour Erosion Risks: Administrative Fact-Checking and Prior Restraint: The safe harbour in Sec. 79 is a cornerstone for the open internet - it means platforms are not directly liable for user posts, akin to how a telephone company isn't liable for what people say on calls. However, the insertion of proactive obligations (e.g., the fact-checking unit compliance) threatens to erode this protection. If intermediaries are told "if you don't remove whatever the government flags as false, you lose immunity," it effectively deputizes them to carry out government censorship or face ruinous liability. This was precisely the argument petitioners made in the Kunal Kamra case: that the 2023 amendment leveraged safe harbour to enforce a form of administrative prior restraint, which is incompatible with Article 19(1)(a) . The Bombay High Court's acceptance of that view is reassuring from a free speech perspective. Another area of safe harbour erosion is the demand for automated filtering - for instance, requiring platforms to use AI to detect and remove certain unlawful content (terrorism, CSAM, etc.). While the goals are legitimate, automated filters risk over-removal (to avoid any liability, they may censor even borderline or context-dependent lawful material). This has been a debate globally: the EU's DSA stops short of mandating filters, though the earlier proposal (TERREG) considered it for terrorist content. In India, the discussions around traceability of messages (in WhatsApp) and upload filters (for copyrighted content) have raised concerns - the Supreme Court in a pending case is examining if traceability (mandating platforms to identify originators of messages) is necessary and proportionate. If such requirements are enforced without safeguards, they indirectly weaken safe harbour by making platforms police every piece of content (or face being treated as contributor to

[18] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Ministry of Electronics & IT, Government of India (Notified 25 Feb 2021; as amended in 2022-23).

illegality). The judiciary's role will likely involve ensuring any such obligations are tightly constrained and have oversight. Another dimension is **executive ordering of content moderation without court orders**: There have been instances of government agencies demanding Twitter or YouTube to remove accounts or posts (under Section 69A or otherwise). While Section 69A orders are subject to review committees, etc., they are opaque. If the government were to start issuing many informal takedown requests or interpret safe harbour as requiring compliance to even unlawful requests, that would be a serious erosion. Hence, maintaining the Shreya Singhal principle that only lawful orders (with reasons and possibility of challenge) count is vital. The court in **Shreya Singhal** effectively protected intermediaries from private pressure; upcoming challenges will test how well that stands against increased state pressure.

Comparative Glance: U.S. First Amendment; EU DSA/GDPR: Comparing jurisdictional approaches provides context. The United States, with its First Amendment, has perhaps the strongest free speech protection in law - the government cannot censor hateful speech or misinformation unless it crosses a very high bar (like incitement to imminent lawless action or defamation with actual malice for public figures). However, U.S. law gives private platforms wide latitude to moderate content (the First Amendment doesn't restrict private companies). They also have a robust safe harbour in Section 230 of the Communications Decency Act, which immunizes platforms for third-party content and even for their good-faith removal of objectionable content. There is ongoing debate in the U.S. about whether large platforms should be treated as common carriers or public forums with some obligations of neutrality, but as of now, the law tilts towards letting platforms govern themselves - something quite different from India's more interventionist regulatory stance. On the other hand, the European Union has taken a regulatory approach through instruments like the **Digital Services Act (DSA) 2022**. The DSA imposes duties on online intermediaries to manage illegal content: it requires notice-and-action mechanisms, transparency in content moderation (including informing users and providing reasons), safeguards for content takedown (e.g., opportunity to contest decisions), and special obligations on Very Large Online Platforms (VLOPs) to assess systemic risks like disinformation and have mitigation measures. The DSA stops short of dictating what content must be removed (except to enforce EU/national laws), but it creates a co-regulatory framework pushing platforms toward responsibility. It also envisions "trusted flaggers" and cooperation with authorities but with oversight. This approach shares the concern for due process that Indian courts have - for example, the requirement to state reasons and allow appeal for moderation decisions parallels what our IT Rules now require. Additionally, the **General Data Protection Regulation (GDPR) 2016/2018** in the EU has an indirect effect on media: it strengthens privacy rights (including the right to erasure of personal data), so digital media outlets have had to implement processes for individuals to request removal of personal information that is no longer relevant. This reflects the privacy-expression balance in a legal form; European courts (like in the Google Spain case) have articulated that such rights must be balanced with freedom of expression and public interest on a case-by-case basis. India is moving towards its own data protection law (the Digital Personal Data Protection Act, 2023 has been passed) which also contains a right to erasure and duties on data fiduciaries (which include social media companies) - though the interplay of that with media content isn't fully clear yet (journalistic exemptions exist). In sum, globally we see U.S. leaning on self-regulation and broad speech tolerance, EU regulating platforms for transparency and protecting users' rights including privacy, and India's path seems to be an attempt to combine safe harbour with increasing accountability of platforms, all while courts ensure core constitutional protections are not compromised.

IX. AI, Courts, and Electronic Media

Artificial Intelligence (AI), particularly large language models like ChatGPT, is the latest frontier intersecting with law and media. Courts and legal practitioners have begun experimenting with AI tools for research and decision support, raising novel questions about reliability, ethics, and evidentiary standards.

Use of AI Tools by Courts and Counsel: In a first for Indian judiciary, the Punjab and Haryana High Court in 2023 referenced an AI chatbot (ChatGPT) in a bail proceeding. In **Jaswinder Singh @ Jassi v. State of Punjab** (2023), Justice Anoop Chitkara posed a query to ChatGPT regarding bail jurisprudence in cases of assault with cruelty, to get a general survey of principles around the world . The AI responded with an answer about factors like flight risk and community danger. The judge ultimately denied bail, while clarifying that the AI's input was not a determinative factor, but just to present a broader perspective.[19] This incident demonstrates both the potential and the caution in using AI: it can quickly compile information or suggest an analysis, but it cannot decide the case and its output is not an "authority." Following this, other instances have emerged - some judges and lawyers have tested AI for drafting or legal research. The Supreme Court itself set up an AI committee and has introduced experimental projects (e.g., AI transcription of court hearings). Recognizing the

[19] Jaswinder Singh @ Jassi v. State of Punjab, Order of Punjab & Haryana High Court in CRM-M No. 28442 of 2022, dated 27 Mar 2023 (noting use of ChatGPT for bail jurisprudence reference).

trajectory, the Kerala High Court in 2023 issued the first formal **AI usage policy** for its staff and judges. The policy permits use of AI tools for translations, summarizations etc., but under strict conditions: judges must verify all AI outputs, especially case law or statute citations, as AI is prone to errors and "hallucinations" (fabricating non-existent references) . The policy also forbids inputting confidential or sensitive data into public AI systems and mandates logging AI use for accountability . This comprehensive guideline aims to harness AI's benefits (efficiency, access to vast data) while mitigating risks (bias, accuracy issues, data security). It essentially positions AI as an assistant, not a decision-maker, and emphasizes human oversight at every step.[20] The Supreme Court of India has yet to adopt a unified policy, but given global trends (e.g., the Singapore Judiciary's 2024 guide on AI use by lawyers and courts which requires disclosure and verification of AI-generated content), it is likely to consider similar guardrails.

Risks: Hallucinations, Bias, Authenticity of E-Records, Evidentiary Reliability: The enthusiasm for AI is tempered by serious concerns. "Hallucination" in AI refers to the model generating plausible-sounding but false information. In a notorious example in the US, lawyers who submitted a brief with AI-cited cases found that some cases were entirely fictitious, leading to sanctions. Indian judges are aware of this; hence verification of every output is necessary. Bias is another risk: AI systems trained on large internet text can inherit societal biases or reflect majority viewpoints that might be prejudiced. If a court naively relied on an AI's suggestion for sentencing or bail (without independent analysis), it could perpetuate biases (for instance, racial or communal biases present in training data). Authenticity of e-records is a related aspect: as AI can generate very realistic fake images, audio (deepfakes), or text, courts will face challenges in determining what electronic evidence is genuine. Already, electronic evidence requires certification (as discussed in Section V); with AI's ability to manipulate media, forensic analysis will need to grow more sophisticated. There may be scenarios where a party presents an AI-generated synthetic video as evidence - detecting such fabrication is vital to prevent injustice. The Evidence Act might need new provisions or clarifications to handle AI-generated evidence (one might analogize it to any manipulated evidence - it's inadmissible if not authentic - but pre-emptive measures like technical screening tools could be employed). Also, if courts use AI for predictive analytics (e.g., to prioritize cases or assist in decision drafting), questions arise about transparency (should parties be informed?), right to a fair hearing (if an AI tool summarized evidence, could it miss nuances a human reader would catch?), and accountability (who is responsible if AI's suggestion influenced a decision incorrectly?). These issues call for a robust ethical and legal framework for AI in judiciary.

Normative Proposals for Judicial Use of AI and Algorithmic Audits: To address these risks, experts have proposed various measures. A key proposal is that any AI tool used in court processes should be certified and audited for bias and accuracy. For instance, if a High Court uses an AI tool to translate judgments, that tool's performance (especially on legal texts) should be evaluated and regularly audited by language experts to ensure it does not misconstrue terms. Another idea is "algorithmic transparency" - if a court relies on an AI-generated output, it should ideally be on open-source or explainable AI that can be inspected (closed proprietary models make it hard to know how they reached a conclusion). Some have argued for an independent ethics committee or regulatory body to approve AI tools for legal use, similar to how medical devices are regulated . The Kerala HC's policy mandates training for judges and staff on AI's limitations ; extending that nationally via judicial academies is important so that the judiciary builds AI literacy - knowing when to trust it and when to be skeptical. There have also been calls for a **"human-in-the-loop"** principle: AI may streamline tasks, but a human judicial mind must review and take responsibility for the final output. This aligns with the fundamental principle that justice must be seen to be done by a human judge accountable to the public, not an unthinking machine. On the evidentiary front, perhaps new legislation could require any AI-generated evidence (like deepfake detection reports) to be accompanied by certification from accredited labs, or allow courts to easily requisition expert analysis when authenticity is questioned. There is also a novel suggestion to develop **court-sanctioned AI tools** (for example, an AI trained on only authentic legal data which judges can safely use for research without fear of hallucinated cases). Ultimately, the aim of such proposals is to reap efficiency gains from AI (reducing backlog by automating routine tasks, for instance) without compromising fairness, transparency, or the quality of adjudication. The issue has even reached global policy forums: UNESCO in 2024 released draft guidelines on AI in judicial systems, stressing principles of transparency, accountability, non-discrimination, human control, and data security.[21] These principles mirror those in Kerala's policy and can guide Indian courts in formulating their own

[20] High Court of Kerala, "Guidelines on Use of Artificial Intelligence in Courts," 2023 (policy document emphasizing human oversight, accuracy, confidentiality in AI usage).

[21] UNESCO, "Draft Policy Guidelines for AI in the Judiciary," 2024 (outlining principles of transparency, accountability, non-bias, and human-centric use of AI in judicial systems).

comprehensive framework as AI becomes more prevalent in the legal domain.

X. Case Studies & Thematic Analyses

Hate Speech & Public Order - Threshold of Incitement Post-Shreya: The Shreya Singhal judgment's insistence on incitement for speech to be restricted under "public order" has influenced how courts handle hate speech. For example, communal or derogatory remarks are not punishable merely because they are offensive; there must be a tendency to lead to violence or disturb public peace. The Supreme Court's free speech jurisprudence going back to **Brandenburg v. Ohio** (U.S. SC) via Rangarajan has effectively been internalized: advocacy of hatred per se, absent incitement, may not be curbed (though it might be condemnable morally). In practice, however, Indian lower courts have sometimes allowed prosecution of even non-inciting hate speech under the broader interpretation of 153A or 295A IPC (which do not explicitly require incitement, only likely enmity or outrage feelings). This inconsistency suggests a need for clarity - possibly from the Supreme Court in a constitution bench on hate speech. The case of **Amish Devgan** (2021) - where a TV anchor was booked under multiple hate speech provisions for derogatory remarks about a Sufi saint - saw the Supreme Court grant him interim protection but simultaneously acknowledge that his words were poorly chosen and had caused offense. The Court took the opportunity to discuss the harms of hate speech but stopped short of laying a clear test, instead disposing of the matter on technical grounds. Nonetheless, it reiterated that hate speech has no redeeming value and can be restricted, but future judgments will need to reconcile that with the incitement threshold. Another post-Shreya development is that the Court has directed consolidation of multiple FIRs when one piece of allegedly hateful speech leads to complaints in various states, to prevent harassment and chilling of speech by multiplicity of processes - as done in the case of journalist *Mohammed Zubair* (2022) where several FIRs for past tweets were transferred to one jurisdiction and then quashed, the Court observing that the power of arrest should not be abused to curb journalists from speaking truth to power.[22] Thus, while hate speech laws remain on the books, the judiciary is cautiously ensuring they are not misused to persecute individuals for isolated statements or political criticism. The threshold for incitement acts as a shield for robust debate, while genuinely dangerous speech (like direct calls for violence) can still be prosecuted.

Misinformation & Fact-Checking Units - Legality, Process, and Safeguards: The challenge of misinformation (especially on social media) has led governments worldwide to consider countermeasures, but these often collide with free speech. India's attempt through the IT Rules amendment to set up a Fact Check Unit (FCU) to flag "fake or false" information about government policies was met with judicial resistance in the **Kunal Kamra** case . The Bombay High Court's decision striking it down rested on lack of safeguards - the FCU, being a government entity, could label criticism as "false" and order takedowns, with no independent review or defined criteria, which is anathema to free discourse . The court was essentially concerned that such a mechanism is overboard and could be a tool of censorship, not just a benign fact-verifier. If combating misinformation is the aim, what alternatives remain? One suggestion is strengthening independent fact-checking bodies and promoting counterspeech (the government itself issuing clarifications, but not mandating removal of content). Another is narrowly targeting only misinformation that causes tangible harm (like health-related fake news during pandemics, or false information that incites panic) and addressing it through existing laws (Disaster Management Act, IPC Sections on public tranquility) rather than broad new powers. Any formal "fact-check" authority would likely need to be independent of the executive - e.g., a statutory body like the Press Council or an ombudsman consisting of journalists and experts - to pass judicial muster. Furthermore, procedural safeguards like giving the originator of the content an opportunity to explain or contest before action, and the ability to appeal the tagging of their content as false, would be essential. From the judiciary's standpoint, misinformation alone doesn't appear as a listed 19(2) ground; it is usually impactful only if it relates to something like public order, defamation, etc. Thus, any anti-fake-news regulation must tie the false content to a harm that fits 19(2) and must be the least restrictive way to address that harm. In absence of that, courts will likely continue to strike down overreaching measures. Importantly, the dialogue between government and judiciary on this reflects a search for the right balance - no one denies misinformation is a problem (indeed, it can undermine elections or health measures), but the cure should not kill the free speech patient.

Live-Streaming, Trials by Media, and Fair Trial Rights: The Supreme Court in recent years has embraced live-streaming of its own proceedings for transparency (starting with constitutional bench cases post 2018's Swapnil Tripathi judgment). This shows a progressive stance that more speech (i.e., more access to court hearings) enhances accountability. However, the issue of media conducting a "trial" outside the courts, especially in criminal cases, raises concerns for fair trial. Sensational TV coverage, pronouncing someone guilty in the court of public opinion, can

[22] Mohammed Zubair v. State of Uttar Pradesh, 2022 SCC OnLine SC 897 (order clubbing and quashing multiple FIRs, citing chilling effect on freedom of press).

prejudice jurors (in jurisdictions with jury) or even judges subconsciously, and certainly can ruin reputations without due process. The Indian judiciary confronted this in **Sahara v. SEBI** (2012) by devising the remedy of postponement orders for such scenarios . Another instructive case was **RK Anand v. Delhi High Court** (2009), where a news channel conducted a sting operation on a lawyer in a BMW hit-and-run trial, exposing collusion to undermine justice. The Supreme Court punished the lawyer for contempt but also commented on the media's role: praising it for uncovering truth in that instance but cautioning that media must not assume the role of investigator, prosecutor, and judge all at once in a pending case. The Court formulated that media should avoid publishing interviews or materials that would be inadmissible or prejudicial during the trial (like confessions, character assassinations) until the trial concludes. This self-regulation by media was advised in lieu of strict liability laws. Nonetheless, in some instances, courts have passed gag orders: e.g., during high-profile trials like the Aarushi Talwar murder case or recently, the case of a university leader's hate speech, courts have directed media to exercise restraint or limited certain reporting to ensure trial integrity. The underlying legal basis remains Article 21's guarantee of fair trial. Moving forward, the Supreme Court may issue comprehensive guidelines on media reportage of sub-judice matters (there were hints of this in Sahara's aftermath, via the Law Commission's suggestions). If not, it will continue on a case-by-case basis. A comparative note: in England, strict contempt laws forbid prejudicial coverage once proceedings are active. India has a contempt law too, but it's rarely invoked for media trials, perhaps out of respect for press freedom. Instead, our courts have tried the narrower path of postponement or advisory. The balance essentially is: free press versus fair trial, both crucial - solution is to restrain timing and tone of press (e.g., no one stops critical coverage, but sensational, one-sided leaks may be curtailed) only to the extent necessary to protect justice, and only temporarily.

Artistic Expression vs. Community Morality (Cinema/OTT cases): Indian society's plural values often clash with artistic freedom. Films and now web series frequently face litigation or public uproar alleging obscenity, offense to religion, or distortion of history. The judiciary's stance has gradually liberalized on obscenity: the test now (per **Aveek Sarkar v. State of W.B.** (2014)) is the "community standards" test alongside whether the work as a whole has literary/artistic merit. This test led to the decriminalization of a naked photo of Boris Becker with his fiancée published in a magazine (in Aveek Sarkar), with the Court saying it was not meant to arouse prurient interest but to make a point against racism. That reasoning would equally apply to cinematic depictions - context matters. **Bobby Art International v. Om Pal Singh Hoon** (1996), the Bandit Queen case , is instructive: the film had explicit scenes of rape and nudity, usually violative of "morality" and "decency" norms. Yet the Supreme Court allowed its screening for adult audiences because the scenes were integral to the film's true narrative of injustice; the Court refused to let "morality" become a talismanic excuse to suppress serious art . Instead, it held that scenes which may be considered indecent in isolation can be allowed if their message is to condemn the indecency and evoke empathy for the victim, not to titillate. This is a nuanced appreciation of artistic expression. In more recent scenarios involving OTT web series like *"Tandav" (2021)*, where FIRs were filed for hurting religious sentiments through a satirical scene, the Supreme Court protected the creators from arrest but did not quash the FIRs, though it did orally urge the need for screening of OTT content. The government responded by extending the IT Rules to OTT, which require a content rating system and a grievance redressal for viewer complaints. No pre-certification for OTT (unlike films) has been imposed; instead, self-censorship through self-regulation is the model. So far, courts have not mandated OTT censorship, generally treating OTT like films (creative work protected but within broad decency laws). Another typical case is when movies based on historical or religious characters are challenged (as with Padmaavat). The Supreme Court's approach, as we saw, was to back the certification process and then uphold artistic liberty against extra-legal bans. Post certification, when some states tried to ban Padmaavat screenings citing law and order, the Supreme Court struck that down too, affirming that a film cleared by CBFC cannot be prohibited arbitrarily and it's the state's duty to maintain order, not by banning the film but by controlling miscreants (2018 orders following Padmaavat clearance). Thus, whether it's OTT or cinema, the higher judiciary has been a strong guardian of artistic speech, only allowing restrictions if a very high threshold of harm is met (like direct incitement to violence, or something that transgresses the narrow band of permissible obscenity involving child pornography etc., which anyway is illegal). The nebulous concept of "community morality" is steadily being overtaken by "constitutional morality" - i.e., values of liberty and equality - in judicial thinking.

Privacy and Surveillance in Electronic Media Ecosystems: Electronic media and digital networks have also enabled unprecedented surveillance and data gathering, both by states and private entities, raising privacy issues. The Pegasus spyware revelations (2021) that the phones of activists, journalists - essentially media persons and dissenters - were infected by military-grade spyware spurred petitions in the Supreme Court. The Court formed an independent technical committee to investigate, emphasizing that surveillance of citizens, if done, must have statutory authorization and oversight, and that privacy is not to

be infringed lightly even in the name of security. While that committee's report remained partly confidential, the episode signified the Court's engagement with digital privacy. Another aspect is the **Right to Privacy vs. news reporting**: post-Puttaswamy, individuals have tried to get old news articles or court judgments about them taken down from the internet to protect their privacy or reputation after many years. High Courts (like the Delhi HC in one right to be forgotten case) have sometimes ordered the masking of names in online records to strike a balance - acknowledging that while judgments are public records, an individual's rehabilitation and privacy are legitimate concerns (especially if they were acquitted or the info is outdated). This is still evolving; a delicate balance is needed so that public archives and press freedom are not undermined. Surveillance by government through electronic media - e.g., monitoring social media posts for dissent - also raises free speech concerns. If people know they are watched, they might self-censor (the chilling effect of surveillance, noted in SC's *PUCL v. UOI* (1997) wiretap case). Therefore, the judiciary has imposed some procedural safeguards on surveillance (like review committees for phone tapping). The expectation is that any mass surveillance or general monitoring (like scanning all internet traffic) without specific legal mandate and independent oversight would run afoul of Article 21 and 19. The upcoming Digital Personal Data Protection law and possibly a future surveillance law will be tested on these counts. In summary, privacy has emerged as a key counterweight to free expression in electronic realms: sometimes privacy needs protection from invasive media (e.g., cameras in bedrooms - clearly not allowed), and sometimes from the state. The Court is trying to develop doctrines to address both - e.g., the "proportionality" test in privacy from **Puttaswamy (2017)** requires any infringement (like surveillance) to have legality, necessity, proportionality, and safeguards . This will inevitably be applied to cases of media-related privacy breaches or surveillance going forward.

XI. Findings

From the above exploration of doctrine and case law, several key findings emerge about the judicial approach to electronic media and free speech:

1. **Doctrinal Evolution:** The trajectory shows a clear evolution from an era of **prior restraint** and paternalistic control to an era of **calibrated judicial review** favoring speech. Early on, courts were willing to countenance broad censorship (e.g., upholding film pre-censorship in 1971 , or not recognizing commercial ads as speech). But over time, especially from the 1990s through 2010s, the judiciary expanded the scope of Article 19(1)(a) (covering new media and commercial speech) and became more skeptical of censorship measures. The **landmark shift** was visible in cases like *Shreya Singhal* (2015) , where the Supreme Court didn't hesitate to strike down a law for overbreadth and vagueness - something relatively rare in earlier decades. This indicates a maturing free speech jurisprudence that values breathing space for expression, even at the cost of invalidating democratically enacted laws, because of the vital role speech plays in democracy. Simultaneously, courts moved from deferential stances (trusting the executive to decide what is moral, decent, etc.) to demanding evidence and narrow tailoring for any restriction. In the digital context, initial knee-jerk bans (e.g., sweeping internet shutdowns or blocking entire platforms) have been reined in by courts invoking constitutional discipline . **In essence, the judiciary has shifted from gatekeeper of permissible content to guardian of expressive freedom**, insisting that the state justify any curbs under strict standards.

2. **Principled Balancing and Standards:** The jurisprudence now reflects consolidated standards when adjudicating free speech vs other interests. Foremost is **proportionality** - virtually every significant restriction (be it a punitive law or a preventive order) is tested for proportionality. The courts have thus ensured a principled balancing: a measure must further a legitimate aim and do so with minimal impact on speech. The introduction of **overbreadth and vagueness** analysis has provided a powerful tool to strike down or read down unclear regulations which chill speech. The **chilling effect** concept, once foreign, is firmly entrenched - judges explicitly discuss whether a law or government action creates an environment of fear for speakers . This focus on the effect of laws on behavior (not just their text) is a sophisticated approach that captures subtle encroachments on freedom. When balancing rights (19(1)(a) vs 21), the courts have applied nuanced tests - for example, permitting privacy or reputation-based constraints only where the harm is serious and the remedy is proportionate (such as narrowly tailored injunctions, not blanket gags). The "least restrictive means" idea comes through often: e.g., content that might be offensive to some can be addressed by age-ratings or viewer discretion warnings (less restrictive) rather than a ban; highly prejudicial media reporting might be addressed by postponement (less restrictive than punishing the press). Thus, the findings show that Indian

courts have been steadily articulating a **consistent set of tests (proportionality, necessity, clarity)** and applying them to diverse contexts, from internet bans to film bans, yielding greater consistency and predictability in outcomes.

3. **Electronic Evidence Standards:** The judiciary has successfully adapted evidence law to the digital age, albeit after some trial and error. Now, there are **consolidated standards for admissibility of electronic evidence**: Section 65B certificate is a must , ensuring authenticity. The Anvar and Arjun Panditrao rulings clarified any earlier confusion and set a uniform rule across courts . This has increased rigor in how digital evidence is handled - investigators know they must properly document and certify electronic data. The emphasis on accuracy and reliability found in cases like *Tukaram Dighole* aligns with global concerns about deepfakes and tampering. The result is that, procedurally, Indian law treats electronic evidence with as much (if not more) care as physical evidence - a matured stance acknowledging the ease of manipulation of bits and bytes. However, a side effect is the many convictions/charges suffering if procedural compliance is missing - a gap that is gradually being addressed by training police and using forensic experts. Overall, the courts have set a **high bar for electronic evidence integrity**, which is a net positive for fair trials.

4. **Persistent Gaps and Concerns:** Despite progressive jurisprudence, certain gaps persist. One is **executive discretion** in media regulation that remains vague or unchecked in practice. For instance, provisions like the power under the Cable TV Act to ban a program in public interest, or the residual powers under IT Act to issue directions in emergencies, are broad and sometimes used opaquely. While courts struck down 66A and the FCU rule, other vague expressions like "decency or morality" in film certification guidelines or "anti-national" content in certain policies are yet to be judicially tested; they could be misused unless narrowed. Another gap is **inconsistent intermediary compliance** with due process. Platforms sometimes remove content merely on unofficial requests or public pressure, undermining the Shreya Singhal principle. Users often have no way to know whether a takedown was due to a legal order or the platform's own policy, because transparency reports (though mandated) may not detail individual cases. The enforcement of rules that they provide notice and reasons to users is not uniform - anecdotal evidence shows users often find their posts deleted without clear explanation. There is also **lack of user awareness and remedy** - many users do not know about the grievance officers or the new Grievance Appellate Committee, and the effectiveness of these bodies remains to be proven. So a de facto lack of due process at the platform level continues. The judiciary hasn't yet actively supervised this area post-Shreya (perhaps because the new regulatory framework is still settling), but that might become a frontier of litigation soon (for example, a user challenging the outcome at a Grievance Appellate Committee or the constitution of such committee). Additionally, **uniform due process for content removal by the state** is lacking; Section 69A blocking orders are not public, unlike court orders. The consequence is that challenging them is hard (one only knows if one stumbles upon the blocking). The Supreme Court in Shreya okayed the secrecy on the logic of protecting public order and privacy of individuals, but one could argue for at least ex-post transparency. Moreover, disparate regimes for different media (print has Press Council, TV news self-regulation vs MIB warnings, OTT self-regulation, social media IT rules, etc.) make for a patchwork approach. A comprehensive legislation could unify these, but that's pending. Finally, an overarching gap is **digital literacy and capacity** in justice system - while evidence law is updated, many trial courts and law enforcement personnel are still catching up on handling and appreciating digital evidence (which can lead to either undue skepticism or undue credulity regarding such evidence). The findings thus indicate that, while higher courts have laid down salutary principles, implementation on the ground and modernization of legal procedures (by legislature or executive) to match these principles is lagging in parts.

XII. Recommendations (Law & Policy Reform)

Building on the analysis, several reforms are recommended to fortify free speech in the digital era while addressing legitimate concerns:

1. **Codify a Digital Speech & Due Process Code:** Parliament should consider enacting a comprehensive "Digital Free Speech and Safety Act" (a suggestion in spirit) that consolidates principles from various judgments into statute. This code would explicitly define the grounds and procedure for restricting online content. It can

enumerate tests for restrictions - e.g., any restriction must be necessary and proportionate to a legitimate aim (embedding the constitutional standard legislatively). It should clarify definitions which are currently vague (like what amounts to "public order" threat online - perhaps limited to incitement of imminent violence, echoing court rulings). Such a code could also specify the hierarchy of actions: e.g., prefer post-publication accountability over prior restraint, require consideration of less intrusive measures (like labeling content as disputed rather than removal, in case of misinformation). By codifying these, the law would guide both regulators and platforms, reducing ad-hoc decisions. It would also signal legislative acceptance of proportionality as a norm, which courts anyway enforce.

2. **Clearer Definitions and Tailored Restrictions:** Many problems arise from broad terms. Laws should be reviewed and amended to narrow definitions. For instance, if a new hate speech law is to be made (as Law Commission recommended adding Sections 153C/505A IPC), it should clearly define what is punishable hate speech - e.g., advocacy of hatred against an identifiable group with intent to incite discrimination or violence - rather than vague terms like "hurting sentiments." Terms like "morality or decency" in movie censorship guidelines should be replaced with concrete descriptions (e.g., prohibit content that explicitly sexualizes minors or content that is obscene by established legal standard). The Cinematograph Act's grounds could be aligned with Article 19(2) grounds verbatim to avoid overreach. If any new rules on fake news are contemplated, define "fake" narrowly as verifiably false statements of fact (excluding opinions) that cause a specific harm (to public order, health, etc.), and even then ensure only misleading factual assertions are targeted, not general expression. Essentially, legislative language must be as precise as possible to eliminate the potential for misuse and to survive judicial scrutiny.

3. **Guardrails of Necessity & Proportionality:** All content-based regulations should include in-built guardrails. For example, an intermediary could be legally required that before removing content in response to government order, it should assess if the order relates to one of the 19(2) grounds and is specific (this mirrors Shreya's mandate). Or a law might require that any blocking of information be reviewed periodically and only continue as long as necessary (to avoid permanent bans where temporary would suffice). Formalizing the necessity requirement - like requiring a written explanation why lesser measures won't work - in executive orders can discipline the process. For example, the Suspension Rules (for internet shutdowns) could be amended to mandate demonstrating why targeted blocking or content filtering cannot achieve the same result, before ordering a full shutdown. These incorporations force a proportionality check at the decision-making stage itself.

4. **Strengthen Intermediary Due Process:** While the 2021 IT Rules introduced due process requirements for platforms, they can be strengthened further. One recommendation is to create an independent **Social Media Ombudsman or appellate tribunal** (instead of government-run committees) where users can appeal content decisions. This body should be independent of both government and industry - perhaps consisting of retired judges, civil society, and technical experts - to ensure unbiased decisions. Its decisions could be binding or at least strongly persuasive. Next, increase transparency: require that blocking orders (Section 69A) be published in anonymized form after a certain time, or at least a summary of reasons be provided to the public. Platforms should also publish detailed transparency reports including number of government requests received, complied with, and content categories. "Reason-giving" by platforms can be improved - using plain language to tell users why their post was removed and which rule it violated, rather than generic statements. The law could mandate standard templates for such notices to ensure completeness (like citing the specific community guideline or law). **Appeal mechanisms** on platforms should be made easy to access (in-app or on-site options to contest removal). If the government's GAC (Grievance Appellate Committee) is to continue, ensure its independence: for instance, have members from outside government, and publish its decisions for accountability. Also, statutory backing for GAC or ombudsman would be better than just rules, to ensure permanence and clarity of powers.

5. **Transparency and Independent Review of Content Moderation:** Borrowing from the EU DSA, mandate larger platforms to undergo annual independent audits of their content moderation practices for systemic risks (like spread of disinformation or bias

against any viewpoint). The audit reports could be submitted to a regulatory body like an empowered TRAI or a new Digital Media Commission. Also require platforms to maintain publicly accessible archives of removed content (except illegal ones like CSAM) so researchers can assess if moderation has patterns of bias. If platforms know their removals are subject to oversight and analysis, they may handle borderline cases more judiciously. On the government side, establish an independent review of blocking orders: the existing Review Committee (comprising bureaucrats) could be augmented to include a judicial officer or an outside expert, to impart more credibility. Perhaps an annual report by the Review Committee (with aggregate data on blocks and how many were reversed or modified on review) could be mandated, tabled in Parliament for democratic oversight.

6. **Update Evidence Law Protocols for Electronic Records:** Given the continuing difficulties with Section 65B, the legislature might refine it. One reform could be to introduce a standard, court-prescribed **certificate format** that enumerates all required information (device details, process, etc.), making compliance easier and uniform. Courts and police can be trained to adopt this template. Alternatively, amend the Evidence Act to allow certain presumptions: for instance, presume integrity of output from a government-certified digital forensic lab, unless challenged - this could reduce burden in situations where obtaining certificate from original source is impracticable (but one must tread carefully to not dilute reliability). Another useful step is to lay down rules for **chain-of-custody documentation** for digital evidence as part of CrPC or evidence rules - so that from seizure to presentation in court, every transfer or access of data is logged and attested. This assures courts of non-tampering and can even substitute for some aspects of the 65B certificate by showing continuity and integrity. Investing in **forensic capacity building** is also vital: more labs, trained examiners, and adoption of latest tools for verifying metadata, detecting edits in media, etc. On admissibility, consider an amendment to allow oral evidence in place of certificate in rare cases where the source is foreign or unwilling - basically statutorily incorporate the essence of Arjun Panditrao's "impossibility" exception by allowing courts discretion to accept secondary evidence without certificate if the interests of justice so demand (with a reasoned order). This would prevent guilty from going scot-free just due to a missing certificate when the evidence is otherwise clearly reliable.

7. **Judicial Guidelines for AI Use in Adjudication and Research:** The Supreme Court (through full court resolution or via the E-Committee) should formulate national guidelines on use of AI similar to Kerala HC's policy . These should outline: permissible use-cases (e.g., legal research, translation, docket management), prohibited use-cases (e.g., AI deciding outcome, or reviewing evidence unsupervised), data privacy measures (don't feed confidential information into third-party AI without anonymization), and requirement of verification of all AI outputs. It should encourage disclosure: if a judge or lawyer uses AI-generated content (like a draft argument or translation), it should be disclosed to the other side or footnoted, to allow scrutiny. The guidelines should also call for maintaining audit logs whenever AI is used in making judicial decisions - so that if later questioned, it's clear what role it played. Moreover, they should emphasize that human reason and judicial values (like empathy, moral judgment) cannot be delegated to AI. The Bar Council could also be urged to issue professional conduct rules regarding AI (like the ABA did in the U.S.) telling lawyers that they must supervise AI outputs and not submit anything in court that they haven't checked for accuracy (thus preventing incidents of fake citations). Overarching all this, perhaps a committee of judges, technologists, and ethicists could be set up to continuously monitor developments in AI and recommend updates to the guidelines (because this field evolves rapidly - e.g., deepfake evidence, AI in court administration, etc., will pose new scenarios). Finally, encourage **algorithmic audits** of any AI tools procured by the judiciary: if, say, an AI tool is used to prioritize cases or assist bail decisions, it must be audited for fairness (ensure it's not biasing against a community). These audits should be periodic and published if possible to maintain public trust.

8. **Capacity Building:** Reforms on paper won't succeed without building capacity among stakeholders. We recommend institutionalizing training programs on technology law and digital forensics for police officers (who investigate cyber offenses and gather e-evidence), for prosecutors, and significantly for judges at all levels. The National Judicial Academy and state academies should have regular courses

on cyber law, privacy law, and science of digital evidence. Judges should be comfortable understanding how a piece of data can be manipulated or verified. Also, creating dedicated "cyber courts" or designating judges with special expertise in each district for trying cybercrime and digital evidence-heavy cases can improve quality of justice (some states have started this). The judiciary might also recruit technical experts as court-appointed neutral advisors in complex cases (like how scientific experts are used), e.g., an amicus curiae who is an IT expert to help the judge in understanding a hacking case. For law enforcement, alongside capacity building, having standard operating procedures (SOPs) for handling social media related complaints is necessary - so that, for instance, multiple FIRs across states can be avoided by coordination, or that they approach courts for content removal rather than pressuring intermediaries directly, aligning with judicial directives.

Through these reforms, the goal is to bolster a framework where freedom of speech is robustly protected in the digital sphere, and where necessary restrictions are implemented with transparency, accountability, and minimal intrusion.

XIII. Conclusion

The foregoing analysis answered the research questions by revealing a judiciary that increasingly acts as a counterweight to both state and private curbs on expression in the electronic media domain. The judicial approach that emerges is one of **principled balancing**: courts strive to uphold the essence of Article 19(1)(a) - the ability to freely express and access information - while permitting restrictions only within the strict confines of Article 19(2) and ensuring those restrictions do not swallow the rule. The courts have shown sensitivity to the unique characteristics of electronic media: its instant, borderless reach (necessitating, for instance, narrower tailoring of public order restrictions and aversion to blanket bans) and its permanence (recognizing the right to privacy or reputation might sometimes require removal of content). Importantly, the judiciary has emphasized **due process** in the digital sphere, effectively extending rule-of-law principles (notice, hearing, reasoned orders, judicial oversight) into areas like content takedowns and surveillance which were once opaque. This evolution marks a shift from ad hoc, often subjective controls to a regime of rules and rights in the digital context.

In summation, the judicial trajectory on electronic media and free speech can be seen as moving along three concentric circles: first, **protecting and expanding the sphere of speech** (by invalidating laws like 66A that unduly shrink it, and by recognizing new forms of speech and media under Article 19(1)(a)); second, **refining the quality of restrictions** (insisting on clarity, narrowness, and necessity, thereby weeding out arbitrary or excessive curbs); and third, **ensuring procedural justice** (so that when speech must be restricted, the process is fair, transparent, and offers redress). This approach helps reconcile Article 19(1)(a) with Article 21 in the digital era - neither exists in absolute isolation; instead, courts mediate their interplay with nuance (for example, by allowing privacy claims but with high proof and often anonymization instead of publication bans, thereby respecting both rights).

The contributions of the judiciary in this realm have been significant. By declaring privacy a fundamental right , the Supreme Court laid ground for more robust personal safeguards in an age of data ubiquity, indirectly shaping how media and platforms handle personal data. By striking down vague laws , it has set benchmarks that deter future legislations from impinging on free speech. By upholding safe harbour but also endorsing reasonable regulation of intermediaries , it navigates a middle path that acknowledges the power of private companies while ultimately re-affirming that the fundamental rights framework should govern the information ecosystem.

Looking to the future, as India enters deeper into the age of platformization and AI-mediated communication, challenges will intensify. We will likely grapple with questions of algorithmic bias (does a Twitter algorithm amplifying certain speech limit others' speech rights?), deepfake videos affecting elections, and possibly AI-generated content flooding discourse. The judicial philosophy evidenced so far - technologically informed, rights-conscious, and process-oriented - is well suited to adapt to these new challenges. One can expect courts to demand transparency of algorithms if they significantly impact public discourse, or to hold that deploying certain AI tools without safeguards might violate rights. The fundamental message from the judiciary is that **technology may change, but constitutional values endure**: freedom of expression, with all its necessary constraints, must be guarded regardless of the medium. The courts appear prepared to be the forum of reason in an age of virality and virulence, ensuring that as communication becomes more digital, the spirit of open debate, accountability, and human dignity is not lost in the machine.

In conclusion, the judicial approach on electronic media and freedom of speech & expression in India has been one of gradual but decisive alignment with constitutional principles, tempering both state and private excesses. The courts have championed a vision of the digital public sphere that is free yet responsible, innovative yet respecting individual rights. Sustaining this balance will require constant vigilance and

perhaps new jurisprudential tools, but the foundations laid in the past decades provide a strong footing. As Justice Hidayatullah observed in K.A. Abbas's case, liberty of expression carries risks of abuse, yet it is the price we pay for democracy . The Indian judiciary's journey reflects an enduring commitment to ensure that this price is never deemed too high, for the rewards of a free society - enriched by robust electronic media - are unquestionably greater.

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