



## INNOVATIVE RESEARCH THOUGHTS IN SOCIAL SCIENCES

Peer Review, Refereed, Biannual, Multiple Language (Hindi & English), Social Science Journal, Open Access Journal

ISSN: 3107-5096(ONLINE)

VOL. 2, ISSUE 1 (SPECIAL EDITION)2026

### Constitutional and Competition Perspective in Media Law

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#### Abstract

*Liberty of speech is cornerstone of Indian democracy, providing the media with the right to disseminate information and opinion under Article 19(1) (a), subject to reasonable restrictions. With the rise of social media and electronic broadcasting, media freedom faces challenges such as misinformation, paid news, and ethical concerns. This study examines the constitutional protections for media, the role of social and electronic media. It also analyzes parliamentary privileges and media transparency, along with advertisement regulations. In this context, the Competition Act, 2002 plays a critical role in curbing anti-competitive practices and regulating misleading advertisements in the media sector. The paper concludes that while media freedom is vital for democracy, a balanced regulatory framework is necessary to ensure accountability, protect consumer rights, and maintain ethical journalism, thereby safeguarding both public interest and constitutional guarantees in India's evolving media landscape.*

**Key Words:** Free Speech; Constitutional Law; Social Media; Misleading Advertisements; Competition Act

#### Introduction

Communication is not only a basic human requirement, but also a basis of all

other human activities. Therefore,

freedom to freely exchange information, ideas and knowledge becomes a basic

human right. The press facilitates a

network of communication among people. Large scale information exchange among humans is the basis for a more informed and democratic society. The freedom of the press plays an important role in bringing change in society. “Freedom of speech and expression” is guaranteed as fundamental right under the Indian constitution.

Mass Media in principle using the national newspapers, radio, and television for impersonal broadcasting a message through these various channels to the general public. Literally the word “Mass” means lots of people and “Media” (plural of medium) means mode through which something is done. Therefore, any media through which a message or thought is communicated to a large number of people are “mass media”.

“Mass media” is used to denote media, which reach out to vast audience such as, to a nation or world. The term was first used in 1920’s, when radio network, newspapers and magazines became popular.<sup>1</sup>

In Bombay, first printing press was

established in 1674. Thereafter, many newspapers in vernacular languages

rapidly hit the market. During the 19th century British India, press faced many arbitrary regulations. One such legislation was Gagging Act of 1857, which was passed to control the vernacular newspapers and for punishing “seditious writings”<sup>2</sup>. As during 1857 mutiny, the press was involved in influencing the masses. Our forefathers had fought a long battle for the Freedom to express our thoughts and opinions without fear that we now see as fundamental right in our constitution.

Today, media includes TV, newspapers, books, films, audio recording, radio, magazines, billboards, mail, telephone, fax and the digital media like internet, blogs, podcast, mobile etc. Present research intent to look upon the matter of functioning of media with respect to reporting. Media has gained enormous power which is unfettered. There is a lack of regulations on electronic media in India. The research work identifies the problem of media regulations in India and

tries to provide suggestions for a more accountable media.

This paper aims to critically analyze media law in India, focusing on freedom of speech, regulation of social and electronic media, advertisement law, and the application of the Competition Act, 2002, to promote a fair, ethical, and accountable media environment.

### **1. Indian Constitution gives right to speak and express freely**

Freedom of speech and expression means that every person has a natural right to share their thoughts openly on any platform or through any media. People should be able to speak without anyone stopping them, without censorship, and without being scared of threats or punishment. However, this freedom is not unlimited. Along with freedom, there are responsibilities. So, in some situations, the law can put reasonable restrictions to protect public order, safety, and the rights of others.

Below are some popular and globally accepted definitions of freedom of expression that are recognized as international standards.:

- “Everyone has the right to freedom of opinion and

expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>3</sup>

- “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>4</sup>

Article 19(1)(a) of the Indian Constitution gives every citizen the right to freedom of speech and expression. This means that people are free to share their thoughts and opinions openly through speaking, writing, printing, pictures, or any other method. This right also includes the freedom to share or publish the views and opinions of other people.

The term ‘freedom of speech and expression’ encompasses the right to seek,

receive, and communicate information and ideas through any medium. It is a comprehensive right that protects not only the expression or exchange of opinions but also the process of accessing and sharing information.<sup>5</sup>

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**Freedom of the press as enshrined in article 19 (1) (a) of Indian constitution**

Freedom of speech and expression includes freedom of press. Supreme Court on many occasions has reiterated that there is no need to express freedom of press as a separate fundamental right, since it is already included in Art. 19 (1) (a).<sup>6</sup> The constituent assembly debated on the matter of including a specific fundamental right as freedom of press. Dr. B. R Ambedkar said that, press is the mirror of individual and citizens. Press is not different from the citizens; it will not have any special right which citizens don't have and also citizen will not have any right which press don't have.<sup>7</sup> The editors and journalist are the citizens who can exercise all the fundamental rights and choose to write their free view point. Therefore, no special mention is needed in

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the constitution as special right to freedom of press. There is no separate fundamental right to press, but it is implicit in freedom of speech and expression under the constitution.<sup>8</sup>

In a landmark judgement of Bennett Coleman v. Union of India Case,<sup>9</sup> Supreme Court held that freedom of press means freedom of all citizens to have the right to speak and publish and express their opinion. The freedom of press also means the right of the people to know and read and it is not different from people's right to speak and express.

Freedom of speech is consistent with other rights under the freedom of speech of press, which are, freedom to publish and circulate, freedom against pre-censorship and freedom of information. All these freedoms together form the freedom of press. In the case of Ushodaya Publication Ltd. v. Government of A.P,<sup>10</sup> the high court observed that freedom of circulation of newspaper is within the scope of freedom of speech and expression.

General public have right to information and communication thus, press have right to provide information to the public. The

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information must be provided adequately so that people make an informed choice. Freedom of information means freedom of press.

In another case of P.L Lakhpal v. Union of India,<sup>11</sup> the question before the court was whether the right to broadcasting is included under freedom of speech and expression under the constitution. The Court held that freedom of speech can be effectively exercised only by way of communicating it to the others through various means. Broadcasting news, newspapers, radio, loud speaker, pamphlet, books allow communication in an effective manner. In this case, court emphasised on the right to communication and right to inform and receive information, and right to access to information. Another part of freedom of speech is right to gather information. Press has the right to collect information and news.

### **Reasonable Restrictions on Freedom of Speech and Expression**

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Freedom of speech and expression does not mean that people can say or publish anything without responsibility. This right cannot be used to abuse others or to

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misuse language in a harmful way. It is not a license to hurt, insult, or spread false information. Therefore, this freedom also comes with certain limits. Under Article 19(3) of the ICCPR,<sup>12</sup> restrictions can be applied on specific grounds:

- (a) To protect the rights and reputation of other people.
- (b) To protect national security, maintain peace and public order, and safeguard public health and moral values.

According to Article 19(2)<sup>13</sup>, the right to speak and express freely, is not unlimited. The government can impose restrictions when necessary to protect society and the rights of others:

- (a) To protect the unity, strength, and security of India as a nation
- (b) To protect the safety and security of the country
- (c) Friendly relations with foreign States
- (d) To maintain peace, discipline, and law-and-order in society
- (e) To prevent content that is vulgar, obscene, or against moral and social

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values

- (f) To stop any act that harms the dignity or authority of the courts
- (g) To protect a person's reputation from false or harmful statements
- (h) To prevent speech that encourages crime, violence, or illegal activities

## **2. Freedom of Speech and Expression and Social Media**

### **Defining Social Media**

Social media represents a dynamic and multifaceted digital ecosystem, comprising numerous online platforms that enable communication, content sharing, and virtual community formation. These platforms empower users to create and circulate information instantly, facilitating global interaction and public participation. However, the ease of anonymous content sharing on several platforms has raised serious concerns regarding cyber harassment, online abuse, and the rapid spread of misinformation. Such challenges demand robust legal and regulatory interventions to ensure accountability and user protection, while

simultaneously preserving the basic right of every citizen to speak freely and express their thoughts, which is guaranteed by Article 19(1)(a) of the Indian Constitution<sup>14</sup> (as interpreted in landmark cases like *Shreya Singhal v. Union of India*)<sup>15</sup>. Additionally, the classification of online platforms as intermediaries according to the Information Technology Act of 2000 necessitates a clear understanding of their liability for user-generated content.<sup>16</sup>

Here's a breakdown of some of the most common social media categories:

**1. Social Networking Sites:** These platforms, like Facebook and LinkedIn, connect users with friends, family, and professional contacts. They allow users to share updates, photos, videos, and participate in discussions.

**2. Media Sharing Sites:** Platforms like YouTube and Instagram focus on sharing multimedia content, such as videos and photographs. They provide users with tools to upload, edit, and share visual content with the world.

**3. Micro blogging Sites:** Platforms like

X, Threads prioritize concise communication, they are well-suited for sharing quick updates, news snippets, and opinions.

**4. Blog Hosting Services:** Platforms like Word Press enable users to create and maintain their own personalized blogs. These blogs function as online journals or platforms for in-depth discussions on specific topics.

**5. Discussion Forums:** Platforms like Reddit and Quora are dedicated spaces for users to engage in threaded conversations on a wide range of topics. They foster in-depth discussions and knowledge sharing among users with shared interests.

### **Social Media and Freedom of Speech and Expression**

Today, almost everything is connected to the internet. Social media has become an important way for people to communicate, express their opinions, and share information and ideas. In many recent global movements, social media played a key role. It allowed people to connect quickly, share news and updates, and create a sense of unity and support. The UN Special Rapporteur on freedom of speech highlighted in a report

to the Human Rights Council that the internet is now a key way for people to exercise their right to freedom of expression. The report suggested that access to the internet should be considered a human right. It emphasized that governments must ensure that people can use the internet at all times, even during political unrest. States are responsible for supporting the enjoyment of free speech, including providing the resources needed, like internet access. They should make policies to ensure that the internet is widely available, easy to access, and affordable for everyone. Additionally, Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) also protect freedom of speech and expression, including on the internet and social media.

In the case of Faheema Shirin RK v. The State of Kerala and others<sup>17</sup>, the High Court has recognized that mobile phones and access to them are essential in daily life. The court considered resolutions from the UNHRC and the General Assembly, which clearly show that internet access is crucial for information

access and is closely connected to education and knowledge. The court stated that the right to access the internet is included in the fundamental right to life, liberty, and privacy under Article 21. The court also noted that it is a vital part of the framework for freedom of speech and expression.

In *Anuradha Basin v. Union of India*,<sup>18</sup> the Supreme Court said that freedom of speech and expression on the internet is an important part of Article 19(1)(a). It also said that unclear or vague restrictions on internet services are not allowed. Any order to shut down the internet must be necessary and reasonable.

### **Legal landscape: Information Technology Act**

The Information Technology Act, 2000 (IT Act) is the main law that governs online activities in India and supports e-commerce. Chapter XI of the Act has Sections 65, 66, 66A, 66C, 66D, 66E, 66F, 67,67A, and67B, which deal with punishments for computer- and internet-related crimes, including on social media. These crimes include tampering with computer code, committing other

computer offenses, sending offensive messages, identity theft, cheating by impersonation, invading someone's privacy, cyber terrorism, and sharing or publishing obscene material online. The law also covers sexually explicit content and material involving children in such acts.

Section 69 of the IT Act gives the Central or State Government the power to intercept, monitor, or decode information from any computer or online system. This can be done to protect India's unity, defense, and security, maintain good relations with other countries, ensure public order, prevent crimes, or help investigate offences.

Section 69A allows the Central Government to block public access to any online Information if it is necessary to protect India's security, public order, or related interests.

Section 69B gives the Central Government the power to ask any agency to monitor and collect online traffic or information to ensure cyber security.

Section 79 explains the responsibility of intermediaries (like social media platforms or internet service providers). It says that they are not legally responsible

for any third-party content, data, or communications that they host or make available, under certain conditions:

- Intermediaries' role is only to provide the platform or system through which information is sent, stored, or hosted. They don't control or own the content.
- Intermediaries do not start the communication, decide who receives it, or change the information being transmitted.
- Intermediaries must act carefully and follow the rules and guidelines issued by the Central Government while performing their duties.

However, an intermediary can be held responsible in the following cases:

- They have conspired, aided, or encouraged unlawful acts through threats, promises, or other means.
- They fail to quickly remove or disable access to material being used for unlawful acts, after they receive actual knowledge or notification from the Government.

If an intermediary does not cooperate, follow government orders, or

deliberately breaks Sections 69, 69A, or 69B, they can be punished.

Section 43A says that if a company collects or stores sensitive personal data on its computers and is careless with security, causing harm or loss to someone, it must compensate the affected person.

Section 70B creates a government agency called the Indian Computer Emergency Response Team, appointed by the Central Government. This agency is responsible for handling cyber security at the national level.

### **Misleading Information on Social Media and Its Effects**

The spread of false or misleading information on social media is a big threat to people's fundamental rights, including the right to free speech (Article 19 (1) (a)) and the right to life and personal freedom (Article 21) in India.<sup>19</sup> Misleading and deceptive digital content, often violates individual dignity, privacy, and public trust, resulting in defamation, communal disharmony, cyber bullying, harassment and reputational harm.<sup>20</sup>

To deal with these problems, India controls online misinformation using the IT Act, 2000, especially Section 66D (cheating by impersonating someone online) and Section 69A (power to block illegal online content).<sup>21</sup> The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 require social media platforms to stop the spread of false information and quickly resolve user complaints.<sup>22</sup>

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With the advent of the Bharatiya Nyaya Sanhita (BNS), 2023, criminal liability has been restructured. Offences related to online misinformation are now covered under Section 356 (defamation), Section 196 (promoting enmity or hatred), and Section 353 (statements causing public mischief).<sup>23</sup> These provisions strengthen accountability for spreading deceptive information capable of disrupting public order or harming individual reputation.

In ANI Media Pvt. Ltd. v. Wiki media Foundation<sup>24</sup>, ANI filed a petition alleging that defamatory and misleading content related to its organization and news reporting was being continuously

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published and circulated on Wikipedia pages hosted by Wikimedia Foundation. ANI argued that such unchecked misinformation not only damaged its reputation but also violated its rights under Articles 19(1) (g) and 21 of the Constitution. The Wikimedia Foundation contended that it only operated the platform and that the content was user-generated; therefore, it could not be held directly liable.

The Delhi High Court observed that online platforms cannot allow the circulation of knowingly false and defamatory information under the guise of user-generated edits and emphasized that digital intermediaries must exercise due diligence, especially when notified about objectionable content. The Court directed Wikimedia to promptly review and remove objectionable or misleading statements after receiving credible complaints and held that intermediaries do not enjoy absolute immunity when misinformation threatens the reputation and rights of individuals and organizations. This judgment is significant because it reinforces accountability of global social media intermediaries in India and strengthens legal protection against misinformation affecting fundamental

rights in the digital space.

### Privacy Concerns in Social Media

India had 491 million social media user accounts in January 2025. This represented 33.7 percent of the total population.<sup>25</sup> Such digital revolution has a special relevance in India where growing smart phone penetration and falling data costs have enabled internet access across socio-economic groupings.

However, the rapid digital shift has created privacy challenges that traditional laws struggle to address. New forms of identity-based violations such as doxxing, impersonation, and sharing intimate images without consent have become increasingly common across Indian social media platforms. Given India's diverse social structure and the high risk of social backlash, especially for vulnerable groups like women and religious minorities, this privacy breaches can cause serious and long-lasting harm. The impact is not only personal but also social, making the need for stronger legal protections more urgent than ever.

The data collection method adopted by social media platforms has gone ahead. Platforms continuously collect personal

Individual Information which not only include demographics behavior but also device information which lacks transparency.<sup>26</sup>

Many companies share user data with outside parties, which further harms users' privacy. As Kamdar explains, big social media platforms in India regularly share users' personal information with advertisers, analytics firms, and business partners and they usually do this without clear permission from the users. The data-sharing system is very complicated, so most users don't even realize that their information is being passed on. In 2021, the Competition Commission of India started an investigation against WhatsApp after it updated its privacy policy, because the new terms allowed WhatsApp to share more user data with its parent company Meta. This shows that forcing users to accept data-sharing without genuine consent is increasingly attracting regulatory attention and legal scrutiny.

In the Indian context, these privacy challenges are compounded by several factors including the relatively low digital literacy rate, the acute socio-

economic inequality in access to technology, and the cultural differences in privacy norms. As Justice Sanjay Kishan Kaul said in his Puttaswamy concurrence, "Indian concepts of privacy should be adapted to its realities and not tested against the frameworks relating to privacy for the Western technological context without the acknowledgment of the socio-cultural backdrop of India."<sup>27</sup>

### **3. Misleading Advertisements**

Advertisements require ethical decisions about what to show, which products to promote, and what content to overlook. In making these choices, the full truth is sometimes overlooked in favor of useful truths, which can mislead both consumers and competitors.

According to P. Ramanatha Aiyarin his book *Advanced Law Lexicon*, misleading advertising is defined as:

"Advertising that deceives or is likely to deceive those to whom it is addressed or whom it reaches and, because of its deceptive nature, is likely to affect consumers' behaviour or injures or is

likely to injure a competitor"<sup>28</sup>

No right is unlimited, and this includes the right to publish advertisements. Ads must follow certain standards and rules. There are reasonable restrictions to protect the interests of consumers and fair competition.

Misleading advertising poses a real danger to the economy because it harms both consumers and competitors. While both groups face similar risks, more attention is given to protecting consumers. This often leaves the interests of competitors overlooked.

### **Competition Act, 2002**

Misleading advertisements are not directly covered by antitrust laws, they still affect both consumers and competitors. Consumers may be misled into buying products that seem better than they really are. At the same time, competitors can lose customers and damage their reputation because of false claims made by rivals.

According to Black's Law Dictionary, a competitor is defined as:

"A person endeavouring to do the same thing and each offering to perform the act,

furnish

the merchandise, or render the service better or cheaper than his rival.”<sup>29</sup>

To understand how competition law relates to misleading advertisements, we need to look at the history and purpose of the Competition Act, 2002. Its predecessor was the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969.<sup>30</sup> As its name suggests, the MRTP Act was enacted with the objective of preventing monopolization of markets and concentration of economic power. At the time of its introduction, India was a newly independent nation guided by socialist economic principles, and the State was reluctant to permit unrestricted control of resources by private entities. Economists believed that the fragile post-independence economy required strict governmental supervision to ensure that economic gains did not accumulate in the hands of a select few while the majority of the population remained below the poverty line. Therefore, the MRTP Act was designed as a comprehensive instrument asserting governmental control over resources and promoting the socialistic ideals embodied

in the Constitution of India.

With changing economic priorities overtime, the relevance of the MRTP Act, 1969 began to decline. India gradually shifted from the Nehruvian<sup>31</sup> model of a State-controlled economy to a liberalised and market-driven economy, encouraging both domestic and foreign enterprises to participate with minimal government intervention. This transformation required a modern legal framework aligned with competition-friendly policies rather than control-based regulation. Consequently, the Raghavan Committee<sup>32</sup> was constituted to recommend a new legal regime and to repeal the MRTP Act. Acting on its recommendations, The Competition Act was passed on 13 January 2003, marking a transition from a monopolies-prevention approach to promotion and protection of competition in the Indian market.

The primary objective of competition law is to ensure the existence of free and fair competition in markets. It seeks to prevent practices that distort competition, restrict consumer choice, or impede market efficiency. Competition law operates on the assumption that markets function optimally when consumers have access to truthful

information and firms compete on price, quality, and innovation. Misleading advertisements strike at the core of these assumptions.

Misleading advertisements distort consumer choice by inducing consumers to make purchasing decisions based on false premises. When demand is artificially influenced through deception, competitors offering genuinely superior products or services are placed at a disadvantage. This distortion affects price, demand allocation, and competitive outcomes, thereby undermining the competitive process that competition law aims to protect.

Under competition law, particularly Section 4 of the Competition Act, 2002, misleading advertisements by a dominant enterprise may amount to abuse of dominant position. When a firm with substantial market power disseminates deceptive claims, it can significantly influence consumer behavior and reinforce its dominance. Such conduct not only harms consumers but also weakens competitive constraints in the market, hence regulatory intervention is important.

The Advertising Standards Council of India (ASCI) is also one of the regulatory bodies that have been set to remedy moral advertisement practices. According to the ASCI Code, advertisements should not be

misleading, neither should they take advantage of the lack of knowledge among the consumers and hence the importance of veracity in promotion communication

## Conclusion

Media freedom remains a cornerstone of a democratic society, but unrestricted liberty without responsibility can undermine the very rights it seeks to protect. In India's fast-evolving media environment, instances of misleading information, sensationalism, unethical advertising, and anti-competitive practices pose serious threats to consumer rights and public trust. Therefore, a balanced regulatory framework is indispensable one that upholds freedom of speech and expression, yet ensures accountability, transparency, and ethical conduct across social, electronic, and print media. Strengthening the enforcement of media laws, advertisement regulations, and the Competition Act, 2002, supported by digital literacy and robust grievance-redressal mechanisms, is crucial for protecting public interest. Ultimately, safeguarding the media's democratic role requires harmonising constitutional

freedoms with responsible journalistic practice, ensuring that media operates not as a force of distortion, but as a reliable pillar of democracy.

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