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BETWEEN PERSONA AND PLATFORM: PERSONALITY RIGHTS, FREE SPEECH, AND THE CONSTITUTIONAL ROLE OF SOCIAL MEDIA INTERMEDIARIES

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ABSTRACT

The conflict between personality rights and freedom of speech is a big constitutional issue that has been fuelled by the development of digital technologies and social media. Personality rights ensure that people are not discriminated against the unauthorised use of their identity, name, image, and likeness etc. However, their growing enforcement, especially by means of takedown orders on social medias is at times coming in conflict with the right to free speech

This paper examines the evolving jurisprudence in India both judicially and legislatively. The courts have awarded wide-ranging injunctive relief in personality rights cases, at instances that has gone beyond commercial misuse to include satire, parody and criticism. This kind of growth is a threat that it will create a chilling effect on the democratic expression. This paper also raises the issue of over-censorship and privatization of speech.Using comparative insights on the United States and the Europe, this paper contends that a constitutional order responding to proportionality is appropriate to allow the protection of persona but not to compromise free and open-minded digital dialogue.

Keywords: Freedom, Rights, Social Media, Chilling Effect, Intermediary, Personality

1. INTRODUCTION

In today's time, the social media has entered each and every aspect of human life which has affected the way in which public discourse used to happen. This transformation of human life has led to the blurring of the fine line of private

identity, commercial persona and public reputation. The role of social media intermediaries such as Meta, X, and YouTube can't be simply overlooked, particularly when we have to discuss this issue in reference to public figures who will often find their images, voices, likeness, etc., modified, parodied and also sometimes distorted.

This issue has led to a constitutional dilemma about how should the law should reconcile personality rights with the freedom of speech and expression in today's digitalized age.

In India, personality rights are not codified in a single statute however they have evolved through judicial interpretation recognizing it as an extension of the right to life and personal liberty under Article 21 of the Constitution. The Hon'ble Supreme Court in Justice K.S. Puttaswamy (Retd.) v. Union of India, (2019)[1] has recognized privacy as a fundamental right and developed a constitutional protecting for individual dignity, and identity. Various High Courts have further extended this protection and developed the doctrine of personality rights, safeguarding public figures and celebrities against the unauthorised commercial exploitation of their persona. Amongst this the core issue remains the freedom of speech and expression under Article 19(1)(a), particularly in digital atmosphere and on the social media where satire, parody, investigative reporting, and political commentary have flourished phenomenally. The landmark judgement in Shreya Singhal v. Union of India (2015)[2] has reinforced the constitutional protection of free speech over the online platforms while clarifying the scope of intermediary liability requiring them to remove the content only upon receiving a court order or notification from a government agency.

The friction between these two constitutional guarantees becomes acute on social media platforms, which function as both private corporations and quasi-public spaces of democratic engagement. Intermediaries now enjoy "safe harbour" protection under Section 79 of the Information Technology Act, 2000, shielding them from liability for user-generated content subject to due diligence obligations as Section 79(3)(b) has been read down to mean that the intermediary upon receiving actual knowledge that a government/ court order has been passed asking it to expeditiously remove the content. Yet, increasing demands for content removal whether for defamation, privacy violations, deepfakes, or personality rights infringement place these platforms at the centre of constitutional adjudication.

When a public figure invokes personality rights to seek removal of critical or satirical content are the courts determining whether such grants of protection safeguards dignity or suppresses legitimate democratic speech?

The aforesaid issue has yet not been settled and was being deliberated but in the due time more complications has been annexed to this with the onset of artificial intelligence generated deepfakes, voice cloning, and endorsements, which diminishes the distinction between parody, misinformation, and commercial exploitation. The Artificial Intelligence led Algorithmic amplification can now amplify the reputational harm of the public figures and at the same time it also has the power to expand the reach of democratic criticism. In this context, is cannot be said that intermediaries only remain as a facilitator of social speeches but it can be very well said that it is now also an active curator of visibility, shaping whose persona circulates and how.

In this paper the writer will navigate the space between persona and platform and see how the constitutional challenge lies not merely in choosing between the two rights, but in harmonising them within a rapidly evolving technological environment. Apart from examining the legal framework of personality rights under Article 21, this paper will also discuss the contours of free speech under Article 19(1)(a), and the evolving jurisprudence on intermediary liability.

2. PERSONALITY RIGHTS

An individual's identity has multiple facets attached to it such as the voice, name, likeness and other attributes, this becomes more essential and worthy of protection when it's related to any public figure. Before getting into the Indian Judicial perspective, it's essential to understand this with the historical evolution of this right under common law regime.

[1] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2019) 1 SCC 1 (India).
[2] Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India)

2.1. HISTORICAL EVOLUTION OF PERSONALITY RIGHTS UNDER COMMON LAW REGIME

Historically, common law has given no protection or recognition to such an individual who asserts to hold a proprietary interest in his personality, although when the persona of such a person has an economic value (Hylton & Goldson, 1996)[3].

It was already a well-known and accepted fact that some form of commercial value is attached to image rights and that there are other jurisdictions besides the common law jurisdictions like the United States, Germany and France which have their own series of statutory law to protect the privacy rights of an image used without the consent of the person being photographed. Nevertheless, English law, initially, did not offer a specific remedy/solution to the violation of the image rights primarily due to the fact that the safeguarding of the image rights was not a prominent issue until the 1990s.

The principles of contract law and breach of confidence were applied during the 18th and 19th centuries as the basic protection of image rights in England (Pollard v. Photographic Company, 1888)[4]. The courts of England were not prepared to acknowledge the image rights as a distinct right as the US courts did. Prince Albert v. Strange (1849) was the first case in UK where the right to the own image was considered. In this case the image right has also not been mentioned directly by the courts but the court had upheld the images of the plaintiff by breach of trust since it was a personal photograph and it fell under the copyright protection of unpublished work (Prince Albert v. Strange, 1848)[5] .Despite the fact that the Court for the first time admitted that there exists a right to own picture, the question was not closed yet because the Court never gave any conceptual clarity to such a right.

The fact to be highlighted here is that this case became the foundation of privacy rights in USA because, at that time, common law was being followed in most of the countries. The main reason for recognising privacy rights was the insufficiency of existing remedies; for example, breach of contract can only be alleged if there is a contractual relationship between the parties. In copyright only the owner of the work is protected by the law. Thus, the English courts gradually started to use defamation law to give relief for the unlawful appropriation of personality traits. Further, this protection also became obsolete as such right can only be availed if the use has in any manner caused any injury to the person's reputation.

During the end of the 20th century, the Courts slowly stated to apply “passing off remedies” in such cases of personality misappropriation however it is noteworthy that before the 1980s, the tort of passing off was still there but there was no application as such. The reason for such delayed application would be attributed to the reluctance of the courts to acknowledge image rights as a business (Howell, 1998)[6].

When the existing laws became inadequate and its application didn’t bear any substantial fruits, the Courts started applying the passing-off principle. One of the major reasons behind this may also be that at the end of 20th century, a phenomenal shift had happened in the personality rights context. Product marketers started utilizing fictional or real-life characters as sponsors or endorsers for their goods and services. They employed various personality traits to make the product more appealing to potential customers, attracting attention to it or suggesting that the character approves or encourages it, because in the market context, competition got intense and the desire to attract customers also got intensified. With this growing trend the chances of unauthorized appropriation of persona also got increased which, consequently, gave rise to the need for proper protection from the unauthorized exploitation of personalities or characters in marketing goods and services (Hylton & Goldson, 1996)[7].

After these developments, the courts were left with the only remedy of passing off in English law which may now prevent the unlawful commercial exploitation of personality attributes like name, likeness, voice, signature, or other references and thus, passing off became the main means of defending personality rights in England (Irvine v. Talksport Ltd., 2003)[8].

[3] Hylton, B. St. Michael, & Goldson, P. (1996). The new tort of appropriation of personality: Protecting Bob Marley’s face. The Cambridge Law Journal, 55(1), 56–64

[4] Pollard v. Photographic Company, (1888) 40 Ch D 345 (England).

[5] Prince Albert v. Strange, (1848) 64 ER 293 (England).

[6] Howell, R. G. (1998). Publicity rights in the common law provinces of Canada. Loyola of Los Angeles Entertainment Law Review, 18, 487

[7] Hylton, B. St. Michael, & Goldson, P. (1996). The new tort of appropriation of personality: Protecting Bob Marley’s face. The Cambridge Law Journal, 55(1), 56–64.

[8] Irvine v. Talksport Ltd., [2003] EMLR 538 (England and Wales Court of Appeal)

Over the time there were multiple cases of appropriation of identity brought before the English courts, but the Courts were never willing to accept the concept of 'personality rights or image rights. English law continues to lack a coherent and consistent framework for the protection of such interests, as courts have remained sceptical about creating monopoly rights over nebulous concepts such as names, likeness, or popularity (Whitford Committee, 1977)[9].

The English Court's inclination towards safeguarding public interest rather than private interest is quite evident from the above discussion. Therefore, it is said that the English Courts have mostly favoured the principles of freedom of expression and have held that true events should be published even if it has commercial value.

Most of the famous figures in the modern world utilizes the trademark law to secure their personality rights i.e. image rights but the English court was not much satisfied in giving protection to the image rights under the trademark law, which seems quite evident in the case of Elvis Presley, where the English courts were not much willing to grant protection to image rights under trademark law by claiming that such mark has lesser inherent distinctiveness. In the 20th century English courts attempted to concrete the legal framework of the image rights by acknowledging the importance of "passing off" in discouraging the illegal merchandising of fictional characters. Although the courts of the UK have not yet provided image rights with thorough legal protection, this sphere of the law is still developing.

3. INDIAN PERSPECTIVE

In India, the personality rights have developed as a judicially devised doctrine to safeguard the commercial and the dignity interests within the identity of an individual. The right to regulate the commercial use of a name, image, likeness, voice and other distinctive qualities; and the right to protest against unauthorised exploitation which will result in harming the reputation or water down the identity, are broadly seen as personality rights. Like the trademark law that involves the protection of the market good will which is incorporated in the goods or services, personality rights safeguard the individual as the initiator of identity itself.

In Indian legal jurisprudence, these rights are not codified in a single statute but have emerged through constitutional interpretation, particularly under Article 21 of the Constitution, which guarantees the right to life and personal liberty.

Though the decision of the Hon'ble Supreme Court in Justice K.S. Puttaswamy v. Union of India didn't explicitly state a detailed doctrine of personality rights but it has in a way highlighted the aspect of dignity and also the control of the access to personal information for safeguarding identity on the Internet. In this case only privacy was declared to be a fundamental right which has opened up a space for further deliberations.

The proprietary aspect of persona had even been recognised in Indian courts before Puttaswamy Judgement. The Delhi High Court in ICC Development (International) Ltd. v. Arvee Enterprises (2003)[10] had held that the right of publicity accrued to a person and safeguarded against the unauthorised commercial use of personality. Likewise, in D.M. Entertainment Pvt. Ltd. v. Baby Gift House (2010)[11], the Court did not allow the usage of the likeness of a celebrity on the dolls (likeness of Mr. Daler Mehndi) since the identity has a commercial value and it can be legally safeguarded.

The further development of protection of personality rights by the judiciary was marked by cases, like Shivaji Rao Gaikwad v. Varsha Productions (2015)[12], the Madras High Court used its power to protect the persona of a popular actor (Mr. Rajnikanth) against unauthorized cinematic representation of the persona which was similar to his unique features.

All these decisions indicate that Indian courts understand the concept of personality rights to include a commercial (publicity based) and a dignitary (privacy based) aspect. The extent of such protection is however dynamic especially when claims go beyond commercial misappropriation to includes criticism, parody, and commentary. To take care of some of the personality rights attributes, Indian courts have used the available intellectual property laws. For example, under trademark, a name, or a signature of a person has been granted protection, where in the copyright law, the performance of a person has been identified and has been given protection. It is therefore clear that, only few aspects of the personality rights are accommodated in the current intellectual property system in India. Nevertheless, other

[9] Whitford Committee. (1977). Report of the Committee to Consider the Law on Copyright and Designs (Cmnd. 6732). London: HMSO.
[10] ICC Development (International) Ltd. v. Arvee Enterprises, 2003 SCC OnLine Del 2 (Delhi High Court, India).
[11] D.M. Entertainment Pvt. Ltd. v. Baby Gift House, CS (OS) 893/2002 (Delhi High Court, India).
[12] Shivaji Rao Gaikwad v. Varsha Productions, 2015 SCC OnLine Mad 158 (Madras High Court, India).

qualities of personality are rather poorly safeguarded since they are not considered in detail as a part of a statutory law and thus the constitutional courts are often called on to adjudicate.

The scope of personality rights has been made complex by the fast growth in digital technologies. The social media enables the real-time duplication and far-reaching broadcasting of personal qualities which is enhanced by algorithms. The use of deepfakes, AI voice cloning, and fake endorsements only complicate the distinction between creative expression and illegal misappropriation. With personality rights occasionally coming into conflict with Article 19(1)(a), the courts should make sure that the protection against commercial abuse does not go so far as to inhibit the satire, journalism, or political criticism. The key issue is to establish principled boundaries that protect dignity without violating the free speech of democracy.

3.1. FREEDOM OF SPEECH AND EXPRESSION IN THE DIGITAL AGE

Articles 19(1) (a) of the Indian Constitution guarantees freedom of speech and allows political participation, dissent, artistic expression and public accountability, which forms the pillars of the democratic system. The Supreme Court has time and again held that free speech is not just all about the right to express personal opinion but also the right to get information and ideas. This freedom however is conditional and is limited under Article 19(2) on grounds like defamation, public order, decency, morality and the sovereignty and integrity of India.

In this digital age, the boundaries of free speech have grown and now the social media platforms are serving as modern day public squares helping in instant communication regardless of geographical and social frontiers.

Censorship, in the official sense of the word, is currently not in place in India when it comes to social media like it is in the case of films. However, the Information Technology Act, 2000 had Section 66A which was of a similar nature as it used lot of subjective terms such as “grossly offensive” or “causing annoyance”. In the case of Shreya Singhal v. Union of India, the Supreme Court had a significant advancement in this area by defending online speech and quashed Section 66A of the Information Technology Act 2000, the Court emphasised that an imprecise and broad restriction on digital expression could not be possible under the constitution and this decision also clarified the nature of intermediary liability, the Court stated that platforms must only be obliged to censor content with actual knowledge delivered in the form of a court order or government notification and, therefore, prevented self-censorship on the basis of mere complaints.

The other aspect of the Freedom of speech is that it can also include satire, parody, caricature and political criticism as a type of expression which, many times, is directed against public figures. The democratic theory acknowledges that when people enter the political life, they have to be contented with a greater level of publicity (New York Times Co. v. Sullivan, 1964)[13]. In the case of Subramanian Swamy v. Union of India,(2016)[14], while upholding defamation, the Court recognizes the value of free expression in the public discourse and says that the Judicial acknowledgement of defamation as a reasonable restriction does not diminish the greater constitutional commitment to robust debate but merely reflects the fine line between reputation and free speech and expression, which is complicated in the digital arena where the speech moves fast and far.

The emergence of social media intermediaries has made the standard free speech doctrine more complex than it was the case with the conventional publishing houses, as nowadays platforms like Meta and X are filled with huge amounts of user-created content, which have been filtered and promoted by algorithms. These platforms holds two statuses; one as private entities and another as a facilitators of public discourses which brings fundamental constitutional concerns (Balkin, 2018)[15]. Although Article 19(1)(a) has traditionally been understood as enforceable only against the State, the judicial review is even more egregious in cases where the courts order intermediaries to remove the content in response to personal claims, including one based on personality rights, far-reaching takedown notices have the danger of creating a chilling effect on what individuals can say or write and what investigative journalism and artistic experimentation can say or show (Faheema Shirin v. State of Kerala, 2019).[16]

[13] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[14] Subramanian Swamy v. Union of India, (2016) 7 SCC 221 (Supreme Court of India).
[15] Balkin, J. M. (2018). Free speech in the algorithmic society: Big data, private governance, and new school speech regulation. UC Davis Law Review, 51, 1149–1210.
[16] Faheema Shirin v. State of Kerala, 2019 SCC OnLine Ker 1733 (Kerala High Court, India).

The online space is a two-sided sword because it increases the strength and susceptibility of the speech. It is to say that in the one direction harmful material can very easily go viral, and at the same time in the opposite direction the opposition and responsibility can become properly organized (Gillespie, 2018)[17]. It should have a corresponding and specific regulatory reaction regardless of whether such may be in the form of court injunctions, intermediary guidelines, or legislative changes. The doctrine of free speech requires a very clear line between commercial misappropriation and expressive contents without such a distinction the imposition of a claim on the basis of identity will inevitably undermine the democratic role of the digital platforms.

3.2. INTERMEDIARY LIABILITY AND THE CONSTITUTIONAL POSITION OF SOCIAL MEDIA PLATFORMS

In India, the law of intermediary liability is incorporated within the Information Technology Act of 2000 where under Section 79 it provides the third parties with a conditional safe harbour in the law. This immunity is however conditional based on the exercise of due diligence and the non-active participation in the production or manipulation of content. Shreya Singhal v. Union of India (2015), clarified that intermediaries must only take down illegal content when they get actual knowledge, in the form of a court order or government notice, which will stop random and excessive censorship of intermediaries based on personal complaints. Presently, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have increased the compliance requirements of platforms, by imposing time-limited takedown and redressal instructions on grievances, further enforcing the intermediaries into the regulation of online speech.

The constitutional difficulty is further complicated by the fact that personality rights execution demands have to be performed by intermediaries. As much as such rights rightfully shield individuals against unauthorized commercialized use of their identity, this right when invoked to deprive satire, criticism or journalism shall also jeopardize the right of free speech under Article 19(1)(a). In these situations, courts that command takedowns act as mediators to the dignity versus expression scale which consequently constitutionalises the actions of private platforms indirectly. Excessively broad or imprecise takedown requests can result in an intermediary developing a risk-averse strategy, which results in the overprocessing of lawful speech and creates a chilling effect on the democratic speech, as warned in Shreya Singhal v. Union of India, (2015).

The Indian courts have more often offered injunctive relief, such as dynamic takedown orders, in personality rights cases especially where commercial exploitation or impersonation by artificial intelligence is at stake. But the extension of such remedies to include satire, commentary and non-commercial expression gives serious constitutional issues of overbreadth and the chilling effect on free expression.

Indian courts have increasingly recognised and protected celebrity personality and publicity rights against unauthorised commercial exploitation. In D.M. Entertainment Pvt. Ltd. v. Baby Gift House, the Delhi High Court granted an injunction against the unauthorised commercial use of a celebrity's likeness on dolls, affirming that personality rights deserve protection from commercial misuse. Similarly, in ICC Development (International) Ltd. v. Arvee Enterprises, the court recognised publicity rights and restrained unauthorised commercial exploitation of a personality. The protection of celebrity persona was further strengthened in Shivaji Rao Gaikwad v. Varsha Productions, where the Madras High Court granted an injunction restraining the release of a film based on the celebrity persona of Shivaji Rao Gaikwad without consent. More recently, the Delhi High Court in Amitabh Bachchan v. Rajat Nagi granted a dynamic injunction directing intermediaries to remove infringing content using the name, image, voice, and likeness of Amitabh Bachchan. This jurisprudence was further expanded in Anil Kapoor v. Simply Life India, where the court granted an injunction against unauthorised use of persona, including AI-generated content, and directed takedown across digital platforms to protect Anil Kapoor's identity. Continuing this trend, the Delhi High Court in Arijit Singh v. Codible Ventures LLP directed removal of AI-generated impersonation tools and restrained unauthorised use of the voice and identity of Arijit Singh. Additionally, the ongoing Baba Ramdev Personality Rights Case further reflects the judiciary's evolving approach toward protecting celebrity persona and publicity rights in the age of digital and AI-generated content.

[17] Gillespie, T. (2018). Custodians of the internet: Platforms, content moderation, and the hidden decisions that shape social media. Yale University Press.

The intermediary position cannot be deemed as absolutely passive in the era of algorithmic amplification; by controlling what content is advocated, de-emphasized, or made viral, the platform takes an active part in creating and influencing the visibility and effect of the speech. This poses significant normative inquiries regarding whether the traditional safeguards of safe harbour fully represent the dynamics of digital communications. Although the idea of increasing the liability would motivate a responsible moderation, it also runs the risk of promoting over-censorship, especially in the politically sensitive or critical material.

Another important aspect here is the issue of government takedown orders for the posts and other similar contents.

4. LEGAL FRAMEWORK OF GOVERNMENT TAKEDOWN ORDERS

There is a recent trend in India, where the Government by using Section 69A of The Information Technology Act, 2000 blocks or causes to be blocked the public access of any information. The grounds for such blocking as per the provision are related to sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order or to prevent incitement to any cognizable offences, these are similar to the restrictions as provided by the Article 19(2). The procedure for issuing such takedown orders is governed through the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 wherein the necessity of recorded reasons in writing along with 48-hour notice to the creator of the content is present. However, the rules also provide for an emergency blocking where the prior notice requirement is not essential. The Hon'ble Supreme has upheld the validity (Shreya Singhal Case) of Sec 69A, on the ground that there are some safeguards available in the procedural part.

Section 79 of the Information Technology Act, 2000 provides the immunity to the intermediaries from any liability arising out of the posts/content of the users only if they comply with the takedown requests of the Government. This provision is supplemented through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021). The timeline fixed for acting upon the receiving of the take down requests as fixed by the Rule 3(1)(d) of the IT Rules, 2021 is 36 hours. However, with the recent amendment of 2026 to the IT Rule, 2021 the present 36 hours timeline is going to be shortened to 3 hours. The 2026 Amendment to the IT Rules, 2021 also included 'synthetically generated information' which means and includes the contents generated through artificially or algorithmically created contents.

Harmful, Unlawful, Inciteful contents must be taken care of but at the same time the critical voices, satirical contents, parody accounts must not be censored. However, the 3 hours timeline has disregarded any scope of human led revieing and it can now only be automated as it's impossible to check it through human interference considering the large number of contents and the population size vis a vis the resources available at the intermediary's disposal.

5. INTERNATIONAL PERSPECTIVE

The battle between the right of the personality and the freedom of speech is not a one-sided or Indian only conundrum, but it is a worldwide problem caused by the discrepancy in the philosophies of the legal systems and jurisprudence. The United States and the European Union are some of the jurisdictions that have provided alternative ways of striking a balance between identity-based rights and expressive freedoms, especially when it comes to digital intermediaries.

5.1. US MODEL

Personality rights are recognised in the United States, under the name of "right of publicity" which is more regulated by state legislation and which protects persons particularly celebrities against any unauthorised commercial use of their identity. This right however is well weighed against the powerful grants granted by the First Amendment to the US Constitution (Volokh, 2003)[18]. In Zacchini v. Scripps-Howard Broadcasting Co., the U.S. Supreme Court admitted that it was valid to apply the right to publicity, but limited it on the issues that related to direct commercial appropriation (Zacchini v. Scripps-Howard Broadcasting Co., 1977)[19]. In the same way, the expressive purposes like parody, satires,

[18] Volokh, E. (2003). Freedom of speech and the right of publicity. Houston Law Review, 40, 903–968.
[19] Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977).

and commentaries are safeguarded through the famous case New York Times Co. v. Sullivan (1964)[20], that defined that the public persons must absorb heavy criticism, unless the criticism was delivered with actual malice. It can, therefore, be concluded that the laws in the U.S. provide an almost good line between the commercial speech (regulated) and expressive speech (a highly protected speech).

In the United States, the law of intermediate liability is under Section 230 of the Communications Decency Act that gives nearly total immunity to the platform of user-generated content. This clause allows platforms to publish and censor content without being regarded as publishers. Despite the fact that Section 230 has contributed to the development of online platforms and the safeguarding of free expression, this legislation has also been accused of being too irresponsible, especially with regard to malicious or deceptive content.

5.2. EUROPEAN UNION MODEL

European Union is more rights based and regulatory, with its emphasis on privacy, dignity, and data protection. The General Data Protection Regulation, (2016)[21] acknowledges the right of the individual to access personal data, including different elements of identity. The landmark judgement in Google Spain SL v. AEPD (2014)[22] came up with the proposition of right to erasure (right to be forgotten) where someone would request the linking of the personal information that is outdated and irrelevant to be removed. This can be viewed in two aspects, one being that it boosts the protective measures of people, other being that it evokes issues regarding curtailed access to information and historical document.

Digital Services Act of the EU enhances the accountability of the intermediaries by subjecting them to the responsibility of transparency, risk management, and content regulation (Digital Services Act, 2022)[23]. In contrast to the U.S. system of extensive immunity, the EU one is based on the practice of a regulated liability, which means that platforms are expected to be responsible and yet maintain core rights. Nevertheless, despite such a framework, there are still safeguards to preserve the freedom of expression, which has provisions that the content removal decisions must be reasonable and reviewable.

5.3. WHICH MODEL SUITS INDIA?

The American paradigm has the virtue of safeguarding satire, criticism and democratic speech, whereas the European one emphasizes the necessity of the institutionalized regulatory controls and scrutinizing procedures. However, to apply both models in Indian context, neither of the models can be applied fully, India has to establish a context-based model that would be able to combine constitutional values of personal dignity and free speech without neglecting the peculiarities of the digital mediators.

6. CONCLUSION

The main issue is that there is no well-defined constitutional and legal framework to restrict personality rights and freedom of speech on social media intermediaries, and Indian courts have gradually accepted personality rights as an extension of dignity and autonomy under Article 21 and their enforcement, especially by broad injunction or takedown order, has frequently been incompatible with the right to free speech under Article 19(1)(a). No codified statutory system of personality rights exists in India and this is one of the factors that make the doctrines inconsistent.

Courts are guided by a patch of privacy, defamation, and intellectual property principles leading to unpredictable and no clear guidance on the trail to follow by the intermediaries. The issue can be, in short, not just a clash of two rights, but a structural constitutional problem: what to do to manage identity-based claims in a digital environment where privately owned platforms are intermediaries to a public conversation, without abandoning the commitment to democratic speech. The answer to this tension does not consist in prioritizing either right but in building up a principled

[20] New York Times Co. v. Sullivan, 376 U.S. 254 (1964).
[21] General Data Protection Regulation. (2016). Regulation (EU) 2016/679 of the European Parliament and of the Council.
[22] Google Spain SL v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, Case C-131/12, ECLI:EU:C:2014:317 (Court of Justice of the European Union, 2014).
[23] Digital Services Act. (2022). Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC. Official Journal of the European Union.

system of constitutional balancing. The framework should be based on proportionality, draw a clear distinction on commercial and expressive use of identity and the framework should have procedural protections to prevent over-censorship. With the development of digital technologies (especially the emergence of deepfakes and synthetic media) the necessity of clarity in dogma and legislative support becomes more significant.

When walking the fine line of persona and platform, the law should make sure that the identity protection does not involve oppression of democratic discourse. The future of personality rights in India will be based on how the courts and policymakers would be able to find a balance between dignity and dissent so that constitutional freedoms can stand the test of the technology.

CONFLICT OF INTERESTS

None.

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