



## Internet and its impact on freedom of speech

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### ABSTRACT :

This research article explores the nuanced impact of the internet on freedom of speech in India, delving into the legal arena, judicial interpretations, and examining international perspectives, in India and beyond. The discussion revolves around the Information Technology Act, 2000, and the numerous amendments to it since then, looking at prominent Supreme Court cases such as *Shreya Singhal v. Union of India* and *K S Puttaswamy v. Union of India*, illustrated with examples. The analysis delves into the changing judicial stance on the digital front. Next, it offers a comparative perspective between India and other democratic countries, including in the United States and Canada, placing the discussion in a global context, while juxtaposing the Indian approach against China's regime. It spotlights some of the key challenges of the internet age such as internet shutdowns and digital surveillance, the balance between security concerns of the state vis-à-vis the rights of the individual, and offers a few suggestions on how to navigate the murky tides of internet governance.

Keywords: Internet Freedom, Freedom of Speech, Information Technology Act, Digital Privacy, Online Censorship, Digital Surveillance, Hate Speech

### Introduction :

The internet has cast the human right to free speech in a new mould. The global internet revolution in the past two decades has changed the way individuals communicate and share information and, most recently, the way they express themselves in limitless ways. "This revolution called for a new interpretation of the right to free speech and expression, guaranteed in the Constitution of India in Article 19(1)(a), which guarantees all persons in India the right to freedom of speech and expression. This is subject to reasonable restrictions, as specified in Article 19(2) of the Constitution for the sake of 'sovereignty and integrity of India', 'the security of the state', 'friendly relations with foreign states', 'public order', 'decency or morality', or in relation to 'contempt of court, defamation or incitement to an offence'." The positive aspect of having an open internet is that it democratizes information sharing, where everyone with an internet connection or a cell phone can now freely express their ideas, mobilise like-minded people, and gain access to information. The negative aspect is that the state now feels compelled to frame regulations to limit free speech and expression if there is a possibility that misuse could jeopardise national security, incite violence, or spread hate speech and fake news.

The Information Technology Act, 2000 (IT Act), and its subsequent amendments are an example of legislative efforts at regulating cyberspace and preventing and controlling cybercrimes. However, certain sections in the IT Act, particularly Section 66A (this section in the IT Act was struck down in 2015 by the apex court), have been criticised for being used to curb free speech and silent dissent. The Supreme Court of India has played a crucial role in deciding disputes wherein the right to freedom of speech must be balanced with the need to regulate in the internet age. Judgments such as *Shreya Singhal vs Union of India* (2015) and *KS Puttaswamy vs Union of India* (2017) have been foundational in determining the contours of freedom of speech in the internet age. In the *Shreya Singhal* judgment, the Supreme Court had struck down Section 66A of the IT Act describing it as being vague and grossly disproportionate to the requirements of the time, in violation of the rights of free speech and expression guaranteed under Articles 19(1)(a) of the Constitution, thereby focusing primarily on the right to free speech. In fact, the judgment can be looked up to see the Court's determination to protect freedom of expression in the face of laws that can be used to silence dissent on the internet.

Furthermore, the *K S Puttaswamy* verdict recognised privacy as a fundamental right. Thus, freedom of speech got some strength indirectly – if a person has a right to privacy when it comes to communication and other private activities, then the communication itself would be protected and the online activity cannot be monitored or scrutinised. For the reasons given, the judgement indirectly works for online surveillance, data protection and an individual's freedom to express views without fear of too much state intrusion. The interplay between regulations of internet and freedom of speech in India demonstrates an evolving legal landscape, where technology, law and social norms run parallel to each other. While the state's interest to issue regulations for internet use to avoid harm to people, national security or public order, that should not compromise the essential democratic value of freedom of speech and expression.

By carefully maintaining this balance, the judiciary's role becomes paramount as well. Its interpretations and judgments protecting the core value of freedom of speech in the constitutional scheme as well as adapting its meaning and application to technological innovations and changes in society – these become critical references for the legal discourse on freedom of speech in the digital era. The judiciary will play an equally critical role in anticipating the consequences of such a discourse upon the basic values of our democracy, and also for the legislature in framing new laws to cater for post-internet India. The impact of the internet on freedom of speech in India is therefore profound and multifaceted – an impact that urges us to

constantly reassess the law, protect individual rights and maintain the digital space as a forum for free and fair expression, guided by the principles of law and ethics.

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### **Concept of Freedom of Speech under the Indian Constitution :**

Freedom of speech is an important idea, embodying liberty of the individual and the power of discourse that represents the thrust of democracy. It forms part of a set of basic rights granted to citizens under the Indian Constitution. Enshrined in Article 19(1)(a), freedom of speech confers on every citizen the right 'to speak, write and inform others in accordance with law'.

#### ***Article 19(1)(a): Freedom of Speech and Expression***

The most important pillar of democracy in India is 'freedom of speech and expression' under Article 19(1)(a) of the Constitution, which confers on every citizen 'the right to freedom of speech and expression. People shall have the right to know everything that is likely to affect them in any way whatsoever by preparing them appropriately to meet the consequences thereof.' All other rights under the Constitution are meaningless unless this particular right of people to freely know and express their thoughts and opinions is vigorously protected. This freedom is the fundamental tenet of a democratic society: it allows the give and take of ideas in the marketplace, it furthers public discourse, it facilitates the critical review of the government and its actions, and essentially humanises the society. This right, however, is not absolute and is accompanied by its own responsibilities and limitations.

#### ***Restrictions Under Article 19(2)***

Although Article 19(1)(a) proclaims the broad freedoms, Article 19(2) sets the bounds of "'reasonable restrictions' upon this freedom: restrictions that can be made on the basis of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." Thus, here too the balance is to permit free expression and at the same time prevent or prohibit any harm or disorder, and this has been the subject of much debate and judicial interpretation. A judicial role in interpreting the quietus placed upon free expression in the Indian constitution by these restrictions is significant, as this prevents arbitrary orders by the executive and permits the court to read down some of the most drastic restrictions as inoperable in specific circumstances. In this way, the supreme judicial body can protect the fundamental right to freedom of speech and expression, while maintaining the order needed for a functioning state and the security of the nation.

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### **Evolution of the Internet and Digital Technology :**

The explosive growth of the internet in India over the past few decades has connected the country, and perhaps more importantly, transformed India's socio-economic landscape. From a tangle of wires in the late 1990s and a small precedent-setting community of consumers, the country has moved to become home to over half a billion internet users across a variety of devices and applications in the past decade. The face of a global village for India, the internet has revolutionised the way Indians communicate, access information and express themselves. If there is no news like bad news, there is no good news like bad news and the internet reaffirmed it. The digital revolution leapfrogged to democratise media as never before, empowered a diverse array of voices from within and without to disseminate and access information on an unprecedented scale. It had immense implications for freedom of speech and expression as well as offering new avenues of exchange, discourse and dissent.

As regards expression and communication, the internet and digital technology have revolutionised how, and through what channels, information produced and received is created, shared and circulated. Thanks to the digital era, we've entered an age where practically anyone who is connected can emerge on the 'global stage', making their voice heard – sometimes even reaching millions of others across the globe. We are now all capable, in theory at least, of advancing our opinions through social media channels, standing by and sharing news through blogs, and promoting a cause not only to our family and friends but to a whole community in one click: this is new, and uniquely effective and swift.

But the same ready availability and the Internet's anonymity can bring further problems: anyone knows all too well the problems of misinformation, bullying and hate speech that cloud the current debate around the issue of freedom of speech and expression, and that take advantage of the ease with which the Internet broadcasts a voice that might not be but should be heard.

In answer to these threats, the Indian legal system has adapted, and continues to do so, finding ways to address the complexities of digital technology while also protecting the constitutional right to freedom of speech and expression. The need to maintain a delicate balance between controlling the internet to avoid abuse and ensuring a free platform for expression is an ongoing challenge for policymakers, judges, commentators and society as a whole.

The tale of internet growth and the evolving landscape of freedom of expression in India serves as an illustration of the kind of feedback loop between technology and the law. As digital technology continues to evolve, so too will debates over digital freedoms – and digital freedom of expression – making this another vital area of study and discussion to foster multistakeholderism in the emergence of a truly balanced digital world.

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### **Information Technology Act, 2000:**

The Information Technology (IT) Act, 2000, and its amendments year by year constitute the primary legal framework in India on the internet, and on its regulation of cyberspace with respect to matters of cybercrimes and electronic commerce. Several of its provisions have implications for free speech,

including those struck down by the Supreme Court in *Shreya Singhal vs Union Of India* (2015), a landmark judgement. Section 66A, which dealt with the punishment for sending offensive or menacing messages via means of communication, was overturned for its vague terminology and rampant misuse against those voicing their opinions through the use of communication services online – a means of communication often central to the circulation of internet discourse itself. The other sections, such as the one on defamation (Section 66D), can impact the kinds of expression that people are willing to engage in online, wary of running afoul of defamation laws or of the possibility of getting arrested for their speech.

The Act lists out different types of cybercrimes and punishments such as identity theft (section); breach of contract, the publication norms, the secrecy of electronic network, criminal intimidation, etc; etc. Many of these provisions how do we protect the users on the one hand against the misuse but on the other hand, allow them to voice and communicate what they want without intruding into their freedom of expression. Cybercrimes are difficult to prevent without crossing the line into infringing people's rights to free expression.

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### **Indian Penal Code (IPC) Sections Related to Speech :**

There are several other sections of the Indian Penal Code that affect freedom of speech – including “Sections 124A (sedition), 153A (promoting enmity between different groups) and 295A (deliberate and malicious acts intended to outrage religious feelings) “– sections of the law that have received much criticism for their potential impact on freedom of speech while seeking to maintain public order and avoid communal discord. Between the state's right to ensure public security and its obligations to ensure the liberties of its people, the tension has always existed.

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### **Protection of Children from Sexual Offences Act (POCSO), 2012 :**

Although freedom of expression is undercut indirectly by the POCSO, 2012, designed to prevent children from sexual abuse and exploitation by prohibiting child pornography (by making the creation, distribution and consumption of child pornography an offence), it's an essential element of any modern 'child-friendly' act. What's new in the modern world is the responsibility on all digital platforms, as well as on the users of these platforms, to moderate the content that can be posted or shared online and make the digital world a safer space – not just for children but for all users on the internet. The legalities related to the internet and freedom of speech in India reflect a complex situation whereby the State's interest to protect sovereignty, security and public morals have to be constantly measured with the fundamental rights of individuals to enjoy freedoms of speech and expression. That is why, the legal structures around it require perpetual evaluation and judicial oversight, with individuals constantly evolving and developing their own identities. They need laws that respect their rights to privacy and autonomy, and also reflect changing technologies and societies. They need law that is cognisant of their needs and concerns.

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### **Landmark Supreme Court Cases :**

This case, *Shreya Singhal v. Union of India*, is seen as a landmark in the history of internet freedoms in India. It questioned, among other things, the constitutionality of Section 66A of the Information Technology Act, 2000, which made it an offence to send any 'offensive' message through a communication service. Critics contended that the lack of clear criteria in defining 'offensive' meant that the police and prosecutors had wide discretion in choosing to prosecute those they didn't like, and that many were willing to order prosecutions in order to harass internet users and disrupt online dissent, thereby also having chilling effects on free speech in cyberspace.

In its judgment, the Supreme Court built upon its determination of freedom of speech and expression as a fundamental right under Article 19(1)(a) of the Constitution. The Court declared Section 66A as imbalanced in its prohibition of free speech, and also vague by anywhere using an undefined term like 'offensive' or 'annoying', and therefore open to misuse to go beyond the constitutional restrictions of 'reasonable restrictions' (assuming them to be permissible under the Constitution at all). The verdict bench ruled it unconstitutional for 'democracy and free speech'. For some, it was a victory for free expression. As the Court put it in its explanation: Their Lordships are of the considered opinion that the punishment ... in the context of the text of [Section] 66A read with [Section] 79 of the [IT Act] ... casts an unnecessary and unjustified fetter on the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. It should be recognised as a landmark, setting the precedents for assessing the constitutionality of a law affecting internet speech.

#### ***K.S. Puttaswamy v. Union of India***

The Supreme Court judgment in *K S Puttaswamy v. Union of India* affirmed that the right to privacy was a fundamental right under the Indian Constitution, and thus inextricably linked to the freedom of speech and expression. That judgment, which concerned digital surveillance and the need for privacy to protect personal data, held that the traditional understanding of privacy protection was critical for the free expression right in the digital age.

Its impact will be felt by every internet user, as it shapes future data protection laws, guidelines and regulations. It emphasises the need to continue working towards more robust systems for ensuring internet users' online privacy, as secure, private and anonymous digital space is essential to allow free speech – so individuals can say what they want without fear of being watched. This judgement will continue to influence legal reforms and policies governing the internet and the digital space in the contexts of governance, data protection and digital rights.

The evolving contours of internet freedom and regulation in India have also been conditioned by the outcomes of some of the crucial cases relating to online censorship, intermediary liability for user-generated content, and so forth. Two examples of these cases include:

***Anuradha Bhasin v. Union of India***

This case concerned the legality of internet shutdowns, specifically the indefinite blackout in Jammu and Kashmir that followed the abrogation of Article 370. The Supreme Court acknowledged that internet is a medium to exercise freedoms of speech and expression and the right to practise any profession or carry on any trade, business or occupation under Article 19(1)(g) using the medium of the internet. The Court held that indefinite shutdowns were not permissible, and any such orders passed must be consistent with the test of proportionality and for a limited duration.

***Swami Ramdev v. Facebook Inc***

Before the Delhi High Court, the question that arose was whether Indian courts can issue global injunctions to remove content obtained by an individual from social media giants, for instance defamatory content posted on Facebook, Google and Twitter. The court held that Indian courts could issue injunctions to the internet behemoths to remove not just the repugnant content uploaded to their Indian domains but content posted worldwide. That case stands out as a symbol of the legal quandaries and imbroglios that arise from jurisdictional reach and enforcement of the law in the global, borderless digital sphere.

**Impact on Digital Freedom and Surveillance :**

Along with others, these cases have contributed significantly to the messy discussions in India about digital freedom, online regulation and intermediary responsibility. They explain the judiciary's struggle to tread a tightrope between free speech and accountability. The findings emphasise the need to protect digital freedoms, even as the internet is being used for criminal purposes.

Implications for State Action Online: The significance of the Anuradha Bhasin case extends to the issue of state action such as internet shutdowns, which have been widely condemned as examples of censorship online. By establishing appropriate limits on the state's use of power, in terms of proportionality and temporal limitation, the judiciary has set a precedent for adjudicating future state action that may affect internet access or the expression of freedom.

We saw the beginning of this with the case of Swami Ramdev vs Facebook Inc, which throws up several fundamental questions concerning the responsible authority of an intermediary over the content uploaded by its users, and the practical difficulties which intermediaries face while balancing the law and its standards across several different jurisdictions and cultures, and striking the right equilibrium between the right to free speech and expression on the one hand, and the right to privacy of others on the other.

Collectively, they capture the deepening judicial effort to balance the agenda to keep the internet open and free, on the one hand, and the imperative to regulate against harms, abuse and misuse, on the other. These cases also chart an ever-shifting legal landscape for the internet in India; they inform policy, legislative reform, and platform design and conduct (and, by extension, those who navigate the spaces of digital life).

**Freedom of Speech in India vs. Other Democracies :**

Although it is guaranteed in the constitution in virtually every contemporary democracy – in India, the US and Canada, for example – legally speaking, the contours of its scope and protection are vastly different across these jurisdictions, largely because of disparate approaches to freedom of speech.

- United States: The First Amendment to the US Constitution provides significant protection for free speech, with little government interference. Unlike in India, there are no explicit constitutional provisions for reasonable restrictions on speech for the sake of public order or decency: the US legal system sets a high bar for restrictions on speech, generally privileging individual rights even in contexts of 'hate speech' that could lead to incitement to violence.
- Canada: Again, just like India, Canada's Charter of Rights and Freedoms guarantees freedom of expression but allows curbs 'such as enjoined by law in the interests of public order, the security of the state, public health or morality' if demonstrably justified in a free and democratic society. The equilibrium that Canadian law strikes between freedom of expression and restrictions in the public interest is, in some ways, broadly similar to the Indian position albeit through a different legal framework and in a vastly different sociological matrix.

***Impact of Cultural and Social Factors***

The cultural and social factors that influence how such laws are enforced in those countries – and how they are perceived by the public – are, to some extent, also factors in that equation. What about India's sensitivity to religious issues? Often quartering freedom of speech in the name of avoiding communal tensions is a proverbial dance with governing one's bull. The evangelical robustness of US defence of free speech – perhaps sustained in part by its deeply held founding philosophy of the individual – are perhaps also reflected in its broader protection of speech generally considered offensive or hateful. The UK illustrates how a commitment to diversity and multiculturalism occupies the middle ground between India and the US. The UK might have fewer laws that protect free speech than the US, but the UK enforces its laws prohibiting hate speech perhaps more effectively than the US does.

**Global Internet Governance and Its Influence on India :**

A growing number of global intergovernmental organisations – including the "Internet Corporation for Assigned Names and Numbers" (ICANN) and

the “International Telecommunication Union” (ITU), as well as the “United Nations” (UN) – make the rules that affect internet governmental issues regarding free expression, privacy and data protection on a global scale.

Along with this, India has consistently advocated for greater global access and reduced digital divide, as well as for sovereign control over internet governance, at international multilateral forums. India often projects itself as an aspirant agent of equilibrium between the global and the domestic at multilateral forums, ranging from questions of expanding access and increased connectivity (in relation to reducing digital divide), online security and public order concerns, to issues of privacy. At the 11th conference of the International Telecommunication Union (ITU) in Brazil in November 2014, India, in its intervention to the directive on data protection, forcefully stated that ‘the legitimate role of governments and their right to regulate the Internet in accordance with national law should not be underestimated.’ This was counterpoised to an emphasis on the right of individuals, enshrined in the cyber charters of the more liberal United States and the more individualistic European Union at multilateral forums.

The Chinese model, by contrast with democratic ones, is the antithesis of the internet freedom embodied by countries such as India, the US and Canada: under the draconian control of its state apparatus, these all work by tight censorship and surveillance, always with the objective of maintaining social stability and perpetuating party control. The comparison illuminates how strikingly differently the same governments are approaching internet governance in response to their divergent political, social and cultural priorities.

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## **Challenges :**

The objections are as lumpy as the challenges are urgent: from the threat of hate speech and fake news to social cohesion, to the tension between national security and individual freedoms, to the tsunami of internet shutdowns and digital surveillance, there’s a lot at stake in figuring out frameworks of privacy and free speech.

### ***Hate Speech and Misinformation***

The explosion of hate speech and misinformation online is perhaps one of the greatest challenges of the digital age. In a country like India that’s already divided along caste and religious lines, the threat is dizzying: inflammatory online content can spark real-world violence and communal conflict. In a country where the legal framework seeks to address the fine balance between free speech and the desire to curb hate speech, who gets to judge which is what remains a contentious topic. For example, India’s Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 try to shift digital platforms’ responsibilities to respond to user complaints against certain content, requiring those who host content to proactively remove content flagged as misinformation or hate speech. But these rules – laws intended to counter the spread of hate – also bring up the reasoned argument that what one person may deem hateful, others argue is simply free speech.

### ***National Security vs. Personal Liberties***

Another one is that between national security and individual rights. Laws and organisational measures, which are supposed to protect the security of the state – for example, surveillance programmes or laws relating to sedition and so forth – can sometimes limit rights to privacy and free expression of individuals. How to ensure that such measures are not overreached or abused to suppress dissent under the pretext of security is the question. Here, judicial control and transparent due process become important, so that systems to ensure national security do not undermine democratic rights.

### ***Internet Shutdowns and Censorship***

The sharpest curve belongs to India – the country with the world’s highest numbers of internet shutdowns. Sometimes justified under the rubric of ‘security of life and property’, internet shutdowns have been used as a riposte to protests and social unrest. These arcs are often excused under the rationale of preventive censorship (whereas censorship may be directed against lawful or protected speech, it is permissible to prohibit purely antisocial conduct), present its own controversial issues around right to information with ramifications that go far beyond questions of security. The affect of internet shutdowns on access to justice, freedom of expression, emergency and essential services, the economy and democracy, and livelihood demands a deeper and more circumspect engagement. What is clear is how one set of rights is gated out by another – how essential services such as seeking medical advice are rendered essentially inaccessible to protesters or people caught in a tangle of agitations. When internet goes dark, the fortifications to the exercise of rights get breached, simply because of these shutdowns. The fourth realm of digital governance introduces a new repertoire of digital panopticons that raise novel sets of questions about the state’s ability to put control mechanisms into action while navigating what Faizah Zakaria calls ‘the precarious balancing act’ of rights of the state and its citizens.

### ***Digital Surveillance and Privacy Concerns***

Apprehensions about privacy would be understandable if state surveillance was permitted in the name of national security or prevention of crime or anti-social activity. The fear of digital surveillance also feeding an alienating ‘Big Brother’ – if society as a whole – or perhaps of individual citizens – might lead to self-censorship, or a chilling effect on free speech, could prevent citizens from speaking their minds freely. The judgment in *K S Puttaswamy v Union of India* (2017), which held that privacy was a fundamental right, also stressed that any form of digital surveillance should be accompanied by oversight and be conducted in accordance with clear legal parameters. Despite this judgment, we are apprehensive that unchecked digital surveillance – of the sort that is being carried out by multiple agencies across the country through technologies like facial recognition – threatens the privacy of citizens and could lead to an erosion of free speech.

Such issues highlight the interplay between free speech, the rule of law, tech and control in these circumstances, and India has to find its rules of the

road in its digital future, striking the right balance and anchored in fundamental rights and democracy. In addition to the balance, the process of dialogic negotiation between the state, civil society and the tech industry also has to continue in crafting an internet that provides security and freedom.

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### Conclusion :

Transformative free speech in India, the instrument might have been facilitated by the internet, but like that eternal double-edged sword, now old and withheld. On the one hand, the Web had democratized the circulation of information in ways that allowed voices traditionally relegated to the deepest margins of the region to now address a global transient. But flipside have been new impediments of misinformation, hate speech and digital surveillance, new limits to elicit new dimensions to that fundamental freedom. The statutory parameters of the Information Technology Act, 2000 and its relevant and related amendments (not excluding the other vicarious legal mechanisms of internet governance such as e-commerce guidelines and security directives) are the laws under trial to craft new measures to grapple with the new problems of the digitised world. Periodic jurisprudence from the Supreme Court in this regard – like the momentous ruling in *Shreya Singhal v. Union of India* and *K S Puttaswamy v. Union of India* – have crystallised a foundational principle, that any imprimatur on new laws written to respond to technological evolution must also time-travel matching changes to that shift, and adapt in ways that don't crisis-cross in the end the parameters of the right to freedom of speech and expression. Bigger are the new dimensions that the High Courts have added to this drift, judicial decisionism being part of India's pivot to comprehend the many regional and contextual facets of the free speech online debate that continues to calibrate the net-age's new rubric of public order against private liberties: it's incumbent upon courts to fence or demarcate the extent of internet freedoms by adjudication. The intervening years of experience in India provide a snapshot of the ways cultural, social and political factors shape discourse on the internet – and a difference could not be starker than between India and a long line of states that have assumed similar tensions between free expression and regulatory need when it comes to internet governance free speech. Only here does the interstice between the twin omnipotent challenges of information control and rights isolate a humanist dystopia: a calibrated synergy of internet shutdowns, censorship and the twin bane of hate speech and misinformation, never remaining free from the digital security and privacy imperative, are the latest fault-lines of the free speech tensions.

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### Suggestions :

Addressing the unprecedented challenges of the digital age, our package offers a series of recommendations to improve content moderation, user data and privacy, and tackle false information and disinformation – helping to move us towards a salutary approach to digital governance where users have more of a say and all stakeholders can have a dialogue. Here, a few suggestions on how to do so: -

- Put in place robust, clear standards and accountability structures for content moderation and requests from government to provide user data or take down content.
- Educational campaigns to raise public awareness of misinformation and the use of social media responsibly.
- Add robust data protection laws that meet international standards that protect individuals and confidentiality.
- Guarantee strong judicial review of actions that prevent access to the internet or that allow or require for the monitoring of digital communications.
- Encourage open dialogue between government, tech companies, civil society and academia about how speech should be governed on the internet.

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